UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

LOCAL RULES

TABLE OF CONTENTS
LOCAL RULES

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Local Rules
Clerk, U.S. District Court
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, California 94102

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Philip E. Burton Courthouse and Federal Bldg.
450 Golden Gate Avenue
San Francisco, CA 94102
Telephone (415) 522-2000

SAN JOSE DIVISION
Robert F. Peckham Courthouse & Federal Building
280 South First Street
San Jose, CA 95113
Telephone (408) 535-5364

United States Magistrate Judge
U.S. Post Office Building, P.O. Box 1390
Monterey, CA 93940
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Oakland Courthouse & Federal Building
1301 Clay Street
Oakland, CA 94612
Telephone (510) 637-3530

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333 J Street, Suite 103
Eureka, CA 95501
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Clerk's Office Hours: 9:00 a.m.-4:00 p.m.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

DIVISION THREE
235 Pine Street, 19th Floor
P.O. Box 7341
San Francisco, CA 94120
Telephone (415) 705-3210

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United States Courthouse
99 South "E" Street
Santa Rosa, CA 95404
Telephone (707) 579-2132

DIVISION FOUR
1300 Clay Street, Room 300
P. O. Box 2070
Oakland, CA 94604
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280 South First Street
San Jose, CA 95113
Telephone (408) 535-5118

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PREAMBLE

The local rules for civil cases pending before the United States District Court for the Northern District of California are promulgated under the authority of Title 28 United States Code Section 2071 and Federal Rule of Civil Procedure 83. The local rules were adopted June 28, 1995, effective September 1, 1995 and are amended effective as of the dates specified by the Court.

The local rules for criminal cases pending before the United States District Court for the Northern District of California are promulgated under the authority of Title 28 United States Code Section 2071 and Federal Rule of Criminal Procedure 57. The local rules for criminal cases were adopted June 18, 1996, effective September 1, 1996 and republished without modification July 1, 1997.

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Richard W. Wieking, Clerk of Court

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TABLE OF CONTENTS
CIVIL LOCAL RULES

CIVIL LOCAL RULES

1. SCOPE AND PURPOSE OF RULES

1-1. Title.

These are the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California. They should be cited as "Civil L.R. _."

1-2. Scope, Purpose and Construction.

(a) Scope. These local rules are promulgated pursuant to 28 U.S.C. § 2071 and FRCivP 83. They apply to all civil actions filed in this court. In promulgating these local rules, it is the intent of the court to establish a comprehensive and uniform set of procedures which apply to proceedings before all the judges of the court and to reduce the occasion for numerous and conflicting Standing Orders by individual judges. Incorporated into these local rules are comprehensive procedures applicable to particular types of cases such as Securities Class Actions (See e.g., Civil L.R. 23-1) and Patent Cases (See e.g., Civil L.R. 16-6). The court has promulgated separate local rules for the following matters:

(1) Admiralty and Maritime;

(2) Alternative Dispute Resolution;

(3) Bankruptcy;

(4) Criminal Proceedings; and

(5) *Habeas Corpus* Petitions.

(b) Supplement to Federal Rules. These local rules supplement the applicable Federal Rules. They shall be construed so as to be consistent with the Federal Rules and to promote the just, efficient, speedy and economical determination of every action and proceeding.

1-3. Effective Date.

These rules took effect on September 1, 1995, and govern all proceedings in civil cases filed on or after that date. An amendment to these local rules shall take effect on the effective date established by the court. Unless otherwise ordered by the assigned judge, an amendment shall apply to cases pending on the effective date, except when fewer than 10 days remain before a party must perform an act regulated by these rules.

Commentary

For reference, the effective date of an amendment or addition is stated following each rule.

1-4. Sanctions and Penalties for Noncompliance.

Failure of counsel or of a party to comply with any provision of these local rules or the Federal Rules of Civil, Criminal or Bankruptcy Procedure shall be a ground for imposition by the court of such sanctions authorized by statute or rule as may be appropriate.

1-5. Definitions.

(a) Clerk. "Clerk," refers to the clerk or a deputy clerk of the court.

(b) Court. Except where the context otherwise requires, the word "court," refers to the United States District Court for the Northern District of California and to a judge acting on behalf of that court with respect to a matter within the court's jurisdiction.

(c) Day. For computation of time under these local rules, "day" shall have the meaning given in FRCivP 6(a).

(d) File. "File" means the delivery to and acceptance by the clerk of a document which is approved for filing and which will be included in the official files of the court and noted in the docket of the case. Under urgent circumstances and for good cause shown, judges may accept documents for filing.

(e) FRCivP. "FRCivP" means the Federal Rules of Civil Procedure.

(f) FRCrimP. "FRCrimP" means the Federal Rules of Criminal Procedure.

(g) FRAppP. "FRAppP" means the Federal Rules of Appellate Procedure.

(h) Federal Rule. "Federal Rule" means any applicable Federal Rule.

(i) General Orders. "General Orders" are orders made by the Chief Judge or by the court relating to court administration. When the court deems it appropriate, a General Order may also be used to promulgate modifications of these local rules. Such General Orders shall remain in effect until the rules are properly amended. No litigant shall be sanctioned for violating a General Order unless the General Order is adopted by a judge as a specific order in a particular case.

(j) General Duty Judge. The "General Duty Judge" is the judge at each division or location of the court designated by the Chief Judge to act for the court in matters for which there is no assigned judge, or when the assigned judge is unavailable. The name of the judge serving as General Duty Judge shall be made available by the office of the clerk.

(k) Lodge. "Lodge" means to deliver a document or paper, which is not approved for filing, to the clerk or a judge, with a request for action and inclusion in the official records of the action.

(l) Judge. Unless the context otherwise indicates, the term "judge," or "assigned judge" refers to any United States district judge, United States bankruptcy judge or to any full-time or part-time United States magistrate judge acting in any matter pursuant to an assignment from a district judge.

(m) Standing Orders of Individual Judges. "Standing Orders" are orders by a judge governing the conduct of a class or category of actions or proceedings assigned to that judge. It is the policy of the court to provide notice of any applicable Standing Orders to parties before they are subject to sanctions for a violation of such orders. Nothing in these local rules precludes a judge from issuing Standing Orders to govern matters not covered by these local rules or by the Federal Rules, such as Standing Orders related to the conduct and procedures of trial before that judge.

(n) Unavailability. A judge is "unavailable" for purposes of the assignment or hearing of a matter if the judge or the judge's staff has filed a certificate of the judge's unavailability, which is of such duration that, given the nature of the matter, the judge will not be available to consider and decide the matter within the time required for the consideration and determination of such matters.

Cross Reference

See Civil L.R. 16-1(b) for additional definitions applicable to case management; 26-5 "*Discovery Cut-Off.*"

3. COMMENCEMENT AND ASSIGNMENT OF ACTION

3-1. Regular Session.

The court shall be in continuous session in the following locations: San Francisco Division, Oakland Division and San Jose Division. From time to time sessions may be held at other locations within the district as the court may order.

3-2. Commencement and Assignment of Action.

(a) Civil Cover Sheet. Every complaint, petition or other paper initiating a civil action shall be filed with a completed civil cover sheet on a form approved by the court.

Cross Reference

See Civil L.R. 3-6(c) *"Jury Demand; Marking of Civil Cover Sheet Insufficient;"*
Civil L.R. 3-7(a) *"Civil Cover Sheet Requirement in Private Securities Actions."*

(b) Commencement of Action. An action may be commenced within the meaning of FRCivP 3 at any office of the clerk for this district. After the matter has been assigned to a judge, unless ordered or permitted otherwise, all subsequent filings shall be made in the office of the clerk at the division or location where the assigned judge maintains chambers.

(c) Assignment to a Division. Unless otherwise required by the court's Assignment Plan, upon initial filing, all civil actions and proceedings for which this district is the proper venue shall be assigned by the clerk to a courthouse serving the county in which the action arises. A civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.

(d) San Francisco and Oakland. All civil actions which arise in the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division.

(e) San Jose. All civil actions which arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be assigned to the San Jose Division.

(f) Transfer of Actions and Proceedings. Whenever a judge finds, upon the judge's own motion or the motion of any party, that a civil action has not been assigned to the proper division within this district in accordance with this rule, or that the convenience of parties and witnesses and the interests of justice will be served by transferring the action to a different division within the district, the judge may order such transfer, subject to the provisions of the court's Assignment Plan.

3-3. Assignment of Action to a Judge.

(a) Assignment. Immediately upon the filing of any civil action and its assignment to a division of the court pursuant to Civil L.R. 3-2, the clerk shall assign it to a judge pursuant to the Assignment Plan of the court. The clerk may not make or change any assignment, except as provided in these local rules or the Assignment Plan.

(b) Multiple Filings. Any single action filed in more than one division of this court shall be transferred pursuant to Civil L.R. 3-2(f).

(c) Prohibition Against Forum or Judge Shopping. If any civil action or cause of action of a civil action is dismissed and is subsequently refiled, it shall be assigned to the judge originally assigned to the action which had been dismissed pursuant to Civil L.R. 3-3(a). The refiling party shall file a Notice of Related Case pursuant to Civil L.R. 3-12. Any subsequently assigned judge may transfer the refiled action to the judge originally assigned to the action which had been dismissed. Any party who files an action in multiple divisions or dismisses an action and subsequently refiles it for the purpose of obtaining an assignment in contravention of Civil L.R. 3-3(b) shall be subject to appropriate sanctions.

3-4. Papers Presented for Filing.

(a) First Page Requirements. The first page of each paper presented for filing shall set forth:

> **(1)** The name, address, telephone and state bar number of counsel (or, if *pro se*, the name, address and telephone number of the party) presenting the paper for filing. This information shall appear in the upper left hand corner and shall indicate the party represented by name as well as that party's interest in the litigation (i.e., plaintiff, defendant, etc.). In multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented;
>
> **Cross Reference**
>
> See Civil L.R. 3-9 *"Parties";* Civil L. R. 3-11 *"Failure to Notify of Address Change."*

(2) If not proceeding *pro se* and if proceeding in conformity with Civil L.R. 11-2(a), the name, address, telephone and state bar number of the member of the bar of the court who maintains an office within the State of California; and

(3) Commencing on the eighth line of the page (except where additional space is required for counsel identification) there shall appear:

(A) The title of this court, including the appropriate division or location;

(B) The title of the action;

(C) The case number of the action followed by the initials of the assigned judge or magistrate judge and, if applicable, the initials of the magistrate judge to whom the action is referred, e.g., for discovery or other pretrial motion activity;
(As amended effective July 1, 1997)

(D) A title describing the paper; and

(E) Any other matter required by Civil L.R. 3.

(b) Caption for Consolidated Cases. When filing papers in cases consolidated pursuant to FRCivP 42, the caption of each paper shall denote the lead case number above all consolidated case numbers. Duplicate originals, however, are not required for associated cases.

(c) General Requirements.

(1) Paper. All papers presented for filing shall be on 8-1/2 inch by 11 inch white opaque paper of original or recycled bond quality with numbered lines, and shall be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover, and firmly bound at the top.

(2) Written Text. Text shall appear on one side only and shall be double-spaced with no more than 28 lines per page, except for the identification of counsel, title of the case, footnotes and quotations. Typewritten text shall be no less than standard pica or 12-point type in the Courier font or equivalent, spaced 10 characters per horizontal inch. Printed text, produced on a word processor or other computer, may be proportionally spaced, provided the type shall not be smaller than 12-point standard font (e.g. Times New Roman). The text of footnotes and quotations shall also conform to these font requirements. *(Amended effective July 1, 1997)*

(3) Identification of Paper. Except for exhibits, each paper filed with the court shall bear a footer on the lower margin of each page stating the title of the paper (e.g., "Complaint," "Defendant's Motion for Summary Judgment," etc.) or some clear and concise abbreviation. Once the court assigns a case number to the action that case number shall be included in the footer.

Commentary

When a case is first filed, the footer on each page of the complaint need only bear the title of the paper (e.g., "Complaint"); but upon assignment of a case number on filing, that number shall be included in footers on any subsequently prepared papers (e.g., "Defendant's Motion for Summary Judgment - C-95-90345 ABC.")

(d) Citation to Authorities. Unless otherwise directed by the assigned judge, citation to authorities in any paper shall include:

(1) In any citation to Acts of Congress, a parallel citation to the United States Code by title and section;

(2) In any citation to U.S. regulations, a citation to the Code of Federal Regulations by title and section, and the date of promulgation of the regulation;

(3) In any citation to a U.S. Supreme Court Case, a citation to either United States Reports, or Lawyers' Edition or Supreme Court Reporter should be used. If the case is not yet available in those formats but is available on electronic databases, citation should indicate the database, year and any screen or page numbers, if assigned;

(4) In any citation to other federal courts, unless an alternate reporting service is widely available, a citation to the Federal Reporter, Federal Supplement or Federal Rules Decisions should be used; and

(5) In any citation to a state court, citations should include either the official reports or any official regional reporting service (e.g., West Publishing). *(Amended effective July 1, 1997)*

(e) Presentation of Class Action. If any complaint, counterclaim or cross-claim is sought to be maintained as a class action, it shall bear the legend "Class Action" on its first page below the title describing the paper as a complaint, counterclaim or cross-claim. *(Amended effective July 1, 1997)*

3-5. Jurisdictional Statement.

(a) Jurisdiction. Each complaint, petition, counterclaim and cross-claim shall include a separate paragraph entitled "Jurisdiction." The paragraph will identify the statutory or other basis for federal jurisdiction and the facts supporting such jurisdiction.

(b) Intradistrict Assignment. Each complaint or petition shall include a paragraph entitled "Intradistrict Assignment." The paragraph shall identify the basis for assignment to the particular location or division of the court to which the action is directed pursuant to Civil L.R. 3-2(c).

3-6. Jury Demand.

(a) Included in Pleading. A party may demand a jury trial as provided in FRCivP 38(b). When a demand for jury trial is included in a pleading, the demand shall be set forth at the end of the pleading and the pleading must be signed by the attorney for the party making the demand. In the caption of such pleading, immediately following the title of the pleading, the following shall appear: "DEMAND FOR JURY TRIAL."

(b) Jury Demand in Removed Cases. In cases removed to this court, any demand for jury trial must be filed and served in conformity with FRCivP 81(c).

(c) Marking of Civil Cover Sheet Insufficient. Marking the civil cover sheet to indicate a demand for jury trial is not a sufficient demand to comply with this Local Rule.

Commentary

See Wall v. National Railroad Passenger Corp., 718 F.2d 906 (9th Cir. 1983).

3-7. Filing and Certification in Private Securities Actions. *(Adopted effective March 25, 1997)*

(a) Civil Cover Sheet Notation Requirement. If a complaint or other pleading contains a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the following shall be so noted in Block VI of the civil cover sheet: "Private Securities Litigation Reform Act."

Cross Reference

See Civil L.R. 23-1 *"Private Securities Actions."*

(b) Certification by Party Filing Complaint and Seeking to Serve as Lead Plaintiff. Any person or group of persons filing a complaint and seeking to serve as lead plaintiff in a civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file with the initial pleading a certificate under penalty of perjury which contains the following averments:

(1) The party has reviewed the complaint and authorized its filing;

(2) The party did not engage in transactions in the securities which are the subject of the action at the direction of plaintiff's counsel or in order to participate in this or any other litigation under the securities laws of the United States;

(3) The party is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(4) The party has made no transactions during the class period in the debt or equity securities that are the subject of the action except those set forth in the certificate (As used herein, "equity security" shall have the same meaning as that term has for purposes of section 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a));

(5) The party has not, within the three years preceding the date of the certification, sought to serve or served as a representative party on behalf of a class in an action involving alleged violations of the federal securities laws, except as set forth in the certificate; and

(6) The party will not accept any payment for serving as representative on behalf of a class beyond the party's pro rata share of any recovery, unless ordered or approved by the court pursuant to section 27(a)(4) of the Securities Act, 15 U.S.C. § 77z-1(a)(4), or section 21D(a)(4) of the Securities Exchange Act, 15 U.S.C. § 78u-4(a)(4).

(c) Certification by Party Not Filing Complaint Seeking to Serve as Lead Plaintiff. Any party seeking to serve as lead plaintiff, but who does not also file a complaint, need not file the certification required in Civil L.R. 3-7(b), but shall at the time of initial appearance state that the party has reviewed a complaint filed in the action and either:

(1) Adopts its allegations or, if not,

(2) Specifies the allegations the party intends to assert.

(d) Certification by Lawyers Seeking to Serve as Class Counsel. Each lawyer seeking to serve as class counsel in all civil actions containing a cause of action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file a certificate under penalty of perjury which contains the following averments:

(1) The lawyer does not directly own or otherwise have a beneficial interest in securities that are the subject of the action; or

(2) The extent of such ownership or interest and whether such ownership or interest does or does not constitute a conflict of interest sufficient to disqualify the attorney from representing the class.

3-8. Claim of Unconstitutionality.

(a) Federal Statute. In any action in which the constitutionality of an Act of Congress is questioned and neither the United States nor any officer, agency or employee thereof is a party, counsel raising the question shall file a notice of such claim with the assigned judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the United States Attorney for this district. The notice shall identify the statute and describe the basis for the claim that it is unconstitutional. The party shall file the notice with a certificate of service pursuant to Civil L.R. 5-4.

(b) State Statute. In any action in which the constitutionality of a state statute is questioned and neither the state nor an agency, officer or employee of the state is a party, counsel raising the question shall file notice of such claim with the assigned judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the State Attorney General. The notice shall identify the statute and describe the basis for the claim that it is unconstitutional. The party shall file the notice with a certificate of service pursuant to Civil L.R. 5-4.

Cross Reference

28 U.S.C. § 2403.

3-9. Parties.

(a) Natural Person Appearing *Pro Se*. Any party representing him or herself without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this court. A person representing him or herself without an attorney is bound by the Federal Rules, as well as by these local rules. Sanctions (including default or dismissal) may be imposed for any failure to comply with these local rules.

(b) Corporation or Other Entity. A corporation, unincorporated association, partnership or other such entity may appear only through a member of the bar of this court.

(c) Government or Governmental Agency. When these rules require an act be done personally by the party, and the party is a government or a government agency, the act shall be done by a representative of the government or governmental agency who is knowledgeable about the facts of the case and the position of the government, and who has, to the greatest extent feasible, authority to do the required act.

3-10. Application to Proceed *In Forma Pauperis*.

Any person may seek court authorization to file suit without payment of a filing fee (*in forma pauperis*) by completing an application and affidavit established for that purpose by the court. The clerk shall bring a properly completed application to the attention of the assigned judge, or to the General Duty Judge, if no judge has been assigned.

Commentary

The forms required by this rule are available at the office of the clerk.

Cross Reference

28 U.S.C. § 1915.

3-11. Failure to Notify of Address Change.

(a) Duty to Notify. An attorney or a party proceeding *pro se*, whose address changes while an action is pending, shall promptly file and serve upon all opposing parties a Notice of Change of Address specifying the new address.

(b) Dismissal Due to Failure. The court may, without prejudice, dismiss a complaint or strike an answer when:

(1) Mail directed to the attorney or *pro se* party by the court has been returned to the court as not deliverable; and

(2) The court fails to receive within 60 days of this return a written communication from the attorney or *pro se* party indicating a current address.

3-12. Notice of Related Case.

(a) Requirement to File Notice. Whenever a party knows or learns that an action, filed in or removed to this district, is (or the party believes that the action may be) related to an action which is or was pending in this district as defined in Civil L.R. 3-12(b), the party shall promptly file a Notice of Related Case. The notice shall be filed in the later-filed action in which the party is appearing and shall be served on all known parties to each related case. A Chambers copy of the notice shall be lodged under Civil L.R. 5-2(b) with the assigned judge in each identified case. *(Amended effective July 1, 1997)*

(b) Definition of Related Case. Any action is related to another when both concern:

(1) Substantially the same parties, property, transaction, event or question of law; and

(2) When it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges. *(Amended effective July 1, 1997)*

(c) Content of Notice. A Notice of Related Case shall contain:

(1) The title and case number of each related case;

(2) A brief statement of the relationship of the actions according to the criteria set forth in Civil L.R. 3-13(b); and

(3) A statement by the party with respect to whether assignment to a single judge is or is not likely to conserve judicial resources and promote an efficient determination of the action.

(d) Response to Notice. No later than 10 days after service of a Notice of Related Case, any party may serve and file a statement to support or oppose the notice. Such statement will specifically address the issues in Civil L.R. 3-12(b) and (c).

(e) Related Case Order. After the time for filing support or opposition to the Notice of Related Case has passed, the clerk of the court shall submit a copy of the notice and related responses to the judge assigned to the earliest-filed case. That judge shall decide if the cases are or are not related and shall notify the clerk of his or her decision. If that judge decides that the cases are not related, no change in case assignment shall be made. If that judge decides that the cases are related, pursuant to the Assignment Plan, the clerk shall reassign all related later-filed cases to that judge and shall notify the parties and the affected judges accordingly.

3-13. Notice of Pendency of Other Action or Proceeding.

(a) Notice. Whenever a party knows or learns that an action filed or removed to this district involves all or a material part of the same subject matter and all or substantially all of the same parties as another action which is pending in any other federal or state court, the party shall promptly file in the action pending before this court and serve all opposing parties in the action pending before this court with a Notice of Pendency of Other Action or Proceeding. *(Amended effective July 1, 1997)*

(b) Content of Notice. A Notice of Pendency of Other Action or Proceeding shall contain:

(1) A description of the other action;

(2) The title of the court in which the other action or proceeding is pending; and

(3) A brief statement of:

(A) The relationship of the other action with the action and proceeding pending in this district; and

(B) If the other action is pending in another U.S. district court, whether transfer should be effected pursuant to 28 U.S.C. § 1407 (Multi District Litigation Procedures) or whether other coordination might avoid conflicts, conserve judicial resources and promote an efficient determination of the action; or

(C) If the other action is pending before any state court, whether proceedings should be coordinated to avoid conflicts, conserve judicial resources and promote an efficient determination of the action.

(c) Procedure After Filing. No later than 10 days after service of a Notice of Pendency of Other Action, any party may file a statement to support or oppose the notice. Such statement will specifically address the issues in Civil L.R. 3-13(b).

(d) Order. After the time for filing support or opposition to the Notice of Pendency of Other Actions or Proceedings has passed, the judge assigned to the case pending in this district may make such orders as is appropriate.

3-14. Disqualification of Assigned Judge.

Whenever an affidavit of bias or prejudice directed at a judge of this court is filed pursuant to 28 U.S.C. § 144, and the judge has determined not to recuse him or herself and found that the affidavit is neither frivolous nor interposed for delay, the judge shall refer the determination of the request to the Clerk for assignment to another judge according to the Assignment Plan of the court. *(Amended effective July 1, 1997)*

Commentary

Recusal under 28 U.S.C. § 455 is normally undertaken by a judge *sua sponte*. However, counsel may bring the issue to a judge's attention by formal motion or raise it informally at a case management conference or by a letter to the judge, with a copy to the other parties in the case. This rule does not preclude a judge from referring matters arising under 28 U.S.C. § 455 to the clerk so that another judge can determine disqualification.

3-15. Transfer of Action to Another District.

In any action ordered transferred from this district to another district, a party may continue to file papers with the clerk of this district until the action is entered on the docket of the transferee court. Unless otherwise provided by the transfer order, the clerk of this court shall transmit the file of the case promptly, but no earlier than 10 days after the filing of the transfer order.

Commentary

The 10-day hold on physical transfer of the case file is designed to retain a minimum period of continued jurisdiction by this district over the case so that a party may expeditiously seek reconsideration or appellate review. See Wilson v. City of San Jose, 111 F.3d 688 (9th Cir. 1997); Lou v. Belzberg, 834 F.2d 730 (9th Cir. 1987).

4. PROCESS-ISSUANCE AND SERVICE

4-1. Service by Marshal Only Upon Court Order.

Except for service on behalf of the United States or as required by FRCivP 4(c)(2) or unless the court orders otherwise for good cause shown, service of summons in all civil actions shall be made by other than the United States Marshal. *(Amended effective July 1, 1997)*

Commentary

28 U.S.C. § 566(c) provides that the United States Marshal shall execute writs, process and orders issued under the authority of the United States.

4-2. Certifying Service of Process.

Pursuant to this court's implementation of FRCivP 16 and 26, within 45 days of filing the complaint, the plaintiff must file either a waiver of service or a certification of service of process on at least one named defendant. Upon the failure of the plaintiff to file this waiver or certification of service, the assigned judge or the clerk may order the plaintiff to appear and show that the action is being diligently prosecuted.

Commentary

Any action by the court in relation to diligent prosection of the action should take into account the limitations on the power of the court to dismiss the action if service is effected within the time provided by FRCivP 4. See Henderson v. United States, 116 S.Ct. 1638 (1996).

Cross Reference

See FRCivP 4; Civil L.R. 16-2(a) *"Case Management Schedule; Service of Schedule Issued by Clerk;"* Civil L.R. 77-2 *"Orders Grantable by Clerk."*

4-3. Service of Supplementary Material.

Along with the summons or request for waiver of service and complaint, a party subject to Civil L.R. 16-2(a), (b), or (c), shall serve the following Supplementary Material:

(a) A copy of the booklet entitled Dispute Resolution Procedures in the Northern District of California;

(b) A copy of the case management schedule issued pursuant to Civil L.R. 16-2(a), (b) or (c);

(c) Any General Orders adopted by the assigned judge or any Standing Orders by the assigned judge for the case;

(d) A copy of a form for the preparation of a Case Management Statement pursuant to Civil L.R. 16-7; and

(e) A copy of the form allowing a party to give notice of the party's consent to assignment of the case to a magistrate judge.

Commentary

The clerk will provide the filing party with copies of the booklet Dispute Resolution Procedures in the Northern District of California, a copy of the case management schedule, form for consent to assignment of the case to a magistrate judge, form for preparation of the case management statement and any pertinent General Orders or Standing Orders. The party should make copies of the schedules and forms for service.

5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5-1. Filing with the Court.

After a complaint has been filed, all papers required to be served upon a party shall be filed with the court, except those papers relating to disclosure and discovery for which filing is not required under Civil L.R. 16 and 26.

Cross Reference

See Civil L.R. 3-2(a) *"Commencement and Assignment of Action; Commencement of Action;"* Civil L.R. 26-2 *"Necessity of Court Order before Filing Discovery or Disclosure Material."*

5-2. Filing Original and Lodging Chambers Copy.

(a) Filing Original. The original of any document required to be filed by the Federal Rules or by these local rules, together with a certificate of service, shall be delivered to the office of the clerk at the location of the chambers of the judge to whom the action has been assigned pursuant to Civil L.R. 3-3(a).

Commentary

The clerk's office will not accept for filing any document, following the initial complaint, unless it is presented at the appropriate divisional office.

Under a pilot program to test its feasibility, a "drop box" is available on the 16th Floor outside the Office of the Clerk in San Francisco. The box may be used to file certain documents before 9:00 a.m. and after 4:00 p.m. weekdays. An electronic stamping machine is located next to the box. It must be used to stamp "Received" on the back side of the last page of the document. The box will be emptied by personnel of the office of the clerk each court day when the clerk's office opens. The "Filed" date which will be placed on the document will be the same as the "Received" date, unless the "Received" date is a weekend or federal holiday. In those instances, the "Filed" date will be the first court date following the weekend or holiday. Documents placed in the box without a "Received" stamp will be filed as of the day the box is next emptied. Questions regarding availability and use of the drop box should be directed to the clerk.

(b) Lodging Copy for Chambers. An extra copy of the document filed under Civil L.R. 5-2(a), marked by counsel as the copy for "Chambers," shall be delivered at the same time to the office of the clerk at the location of the chambers of the judge to whom the action has been assigned. If the matter has been assigned to a magistrate judge for hearing, an additional copy designated for delivery to the assigned magistrate judge shall be delivered to the office of the clerk at the location of the chambers of the magistrate judge.

Commentary

When a copy for chambers is delivered to the office of the clerk in conformity with Civil L.R. 5-2(b), counsel will be deemed to have complied with any order requiring delivery of that document to the chambers of the assigned judge.

5-3. Manner of Service.

In addition to the means of service set forth in FRCivP 5 and upon written consent by the receiving party, papers may be delivered by a private or commercial delivery service, electronically or by other means.

5-4. Certificate of Service.

(a) Form. Whenever any pleading or other paper presented for filing is required (or permitted by any rule or other provision of law) to be served upon any party or person, it shall bear or have attached to it:

(1) An acknowledgment of service by the person served, or

(2) Certificate of service stating the date, place and manner of service and the names of the persons served, certified by the person who made service, pursuant to 28 U.S.C. §1746.

(b) Sanction for Failure to Provide Certificate. Failure to comply with this rule shall not be a ground for a refusal to file a paper or pleading, but the document may be disregarded by the judge if an adverse party makes timely objection on the ground of lack of service.

Cross Reference

See FRCivP 5(d).

5-5. Facsimile Filings. *(Adopted effective July 1, 1997)*

(a) Method of Filing. In lieu of filing an original document pursuant to Civil L.R. 5-2(a), a party or a party's agent may file a facsimile ("fax") copy of the original document pursuant to this rule. For purposes of this rule, any fax filing agency shall be regarded as an agent of the filing party, not an agent of the court. Also, for purposes of this rule, the image of the original manual signature appearing on a fax copy filed pursuant to this rule shall constitute an original signature for all court purposes. Fax copies may be filed as follows:

(1) The fax copy should not be transmitted directly to the clerk by electronic or telephonic means;

(2) The fax copy must be delivered to the office of the clerk at the location of the chambers of the judge to whom the case has been assigned pursuant to Civil L.R. 3-3(a);

(3) The fax copy must comply with the requirements of Civil L.R. 3-4; and

(4) The fax copy is accompanied by a certificate of service, as well as an additional copy of the document marked as a copy for "Chambers" (and if the matter has been assigned to a magistrate judge for hearing, an additional copy designated for delivery to the chambers of the assigned magistrate judge).

(b) Disposition of the Original Document. The following procedures shall govern disposition of the original document when a fax copy is filed pursuant to Civil L.R. 5-5(a):

(1) The original signed document shall not be substituted into the court's records, except upon court order;

(2) Any party filing a fax copy of a document must maintain the original signed document and the transmission record of that document until the conclusion of the case, including any applicable appeal period. A transmission record for purposes of this rule is a paper printed by the facsimile machine upon which the original document was transmitted, stating the telephone number of the receiving machine, the number of pages sent, the transmission time and indicating no error in transmission.

(3) The original signed document from which a fax copy was produced shall be provided by the filing party to any requesting party or to the court for review.

7. MOTION PRACTICE

7-1. Motions.

(a) Types of Motions. Any written request to the court for an order must be presented one of the following means:

(1) Duly noticed motion pursuant to Civil L.R. 7-2;

(2) When authorized, expedited motion pursuant to Civil L.R. 7-10.

(3) When authorized, *ex parte* motion or request pursuant to Civil L.R. 7-11; and

(4) Stipulation of the affected parties pursuant to Civil L.R. 7-12.

(b) To Whom Made. Motions shall be directed to the judge to whom the action is assigned, except as that judge may otherwise order. In the judge's discretion or upon request by counsel and with the judge's approval, a motion may be determined without oral argument or by conference telephone call.

(c) Unassigned Case or Judge Unavailable. A motion may be presented to the General Duty Judge or, if unavailable, to the Chief Judge or Acting Chief Judge when:

(1) The assigned judge is unavailable as defined in Civil L.R. 1-5(n) and an emergency requires prompt action; or

(2) An order is necessary before an action can be filed.

7-2. Notice and Supporting Papers.

(a) Time. Except as otherwise ordered or permitted by the assigned judge or these local rules, and except for motions made during the course of a trial or hearing, all motions shall be filed, served and noticed in writing on the motion calendar of the assigned judge for hearing not less than 35 days after service of the motion.

(b) Form. In one filed document not exceeding 25 pages in length, a motion shall contain:

(1) On the first page in the space opposite the caption below the case number, the noticed hearing date and time;

(2) In the first paragraph, notice of the motion including date and time of hearing;

(3) In the second paragraph, a concise statement of what relief or court action the movant seeks; and

(4) In the succeeding paragraphs, the points and authorities in support of the motion which shall comply with Civil L.R. 7-4(a).

(c) Proposed Order. Unless excused by the assigned judge hearing the motion, counsel shall lodge a proposed order.

(d) Affidavits or Declarations. Each motion shall be accompanied by affidavits or declarations pursuant to Civil L.R. 7-5.

Commentary

The time periods set forth in Civil L.R. 7-2 and 7-3 regarding notice, response and reply to motions are minimum time periods. In a complex motion, parties are encouraged to stipulate or seek a court order establishing a longer notice period with correspondingly longer periods for response or reply.

7-3. Opposition; Reply; Counter-Motion.

(a) Opposition. Any opposition to a motion shall be served and filed not less than 21 days before the noticed hearing date. The opposition may include affidavits or declarations, as well as a brief or memorandum under Civil L.R. 7-4. Pursuant to Civil L.R. 7-4(b), such briefs or memoranda shall not exceed 25 pages of text.

(b) Statement of Nonopposition. If the party against whom the motion is directed does not oppose the motion, that party shall file a Statement of Nonopposition within the time for filing and serving any opposition.

(c) Counter-Motion. Together with an opposition, a party responding to a motion may file a counter-motion related to the subject matter of the original motion. Such counter-motion shall be noticed for hearing on the same date as the original motion, but shall otherwise comply with Civil L.R. 7-2.

(d) Reply. Any reply to an opposition, or opposition to a counter-motion, shall be served and filed by the moving party not less than 14 days before the originally noticed hearing date. The reply may include affidavits or declarations, as well as a supplemental brief or memorandum under Civil L.R. 7-4. Pursuant to Civil L.R. 7-4(b), reply papers shall not exceed 15 pages of text.

Commentary

Upon request of the original moving party, the court may enlarge the time for filing an opposition to a counter-motion and reschedule the noticed hearing date. See Civil L.R. 7-8 *"Enlargements or Shortening of Time."*

(e) Supplementary Material. Prior to the noticed hearing date, counsel may bring to the court's attention a relevant judicial opinion published after the date the reply was filed by serving and filing a Statement of Recent Decision, containing a citation to and providing a copy of the new opinion without argument. Otherwise, once a reply is filed, no additional memoranda, papers or letters shall be filed without prior court approval.

7-4. Brief or Memorandum of Points and Authorities.

(a) Content. In addition to complying with the applicable provisions of Civil L.R. 3-4, a brief or memorandum of points and authorities filed in support, opposition or reply to a motion shall contain:

(1) On the first page in the space opposite the caption below the case number, the noticed hearing date and time;

(2) If in excess of 10 pages, a table of contents and a table of authorities;

(3) A statement of the issues to be decided;

(4) A succinct statement of the relevant facts; and

(5) Argument of the party, citing supporting authorities.

(b) Length. Unless the court expressly orders otherwise pursuant to a party's request made prior to the due date, briefs or memoranda filed with opposition papers shall not exceed 25 pages of text and reply papers shall not exceed 15 pages of text.

Commentary

Although Civil L.R. 7-4(b) limits briefs to 25 pages of text, counsel should not consider this a minimum as well as a maximum limit. Briefs with less than 25 pages of text may be excessive in length for the nature of the issues addressed.

7-5. Affidavit or Declaration.

(a) Affidavit or Declaration Required. Factual contentions made in support of or in opposition to any motion should be supported by an affidavit or declaration and by appropriate references to the record. Extracts from depositions, interrogatory answers, requests for admission and other evidentiary matters must be appropriately authenticated by an affidavit or declaration.

(b) Form. An affidavit or declarations shall contain only facts, shall conform as much as possible to the requirements of FRCivP 56(e), and shall avoid conclusions and argument. Any statement made upon information or belief shall specify the basis therefor. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.

7-6. Oral Testimony Concerning Motion.

No oral testimony will be received in connection with any motion, unless otherwise ordered by the assigned judge.

7-7. Continuance of Hearing or Withdrawal of Motion.

(a) Before Opposition is Filed. Except for cases where the court has issued a Temporary Restraining Order, a party who has filed a motion may file a notice continuing the originally noticed hearing date for that motion to a later date if:

(1) No opposition has been filed; and

(2) The notice of continuance is filed prior to the date on which the opposition is due pursuant to Civil L.R. 7-3(a).

(b) After Opposition is Filed. After an opposition to a motion has been filed, the noticed hearing date may be continued to a subsequent date as follows:

(1) When parties affected by the motion have not previously stipulated to continue the hearing date, unless the hearing date has been specially set by the judge, the parties affected by the motion may stipulate in writing pursuant to Civil L.R. 7-8(b) to continue the hearing date; or

(2) Upon order of the assigned judge:

(A) On the court's own motion; or

(B) Pursuant to an expedited motion by a party pursuant to Civil L.R. 7-10; or

(C) Pursuant to Civil L.R. 56-1 to permit a party time to respond to papers filed under FRCivP 56(c).

(c) Responsibility for Being Informed of Hearing Date. Counsel shall be responsible for being informed of the hearing date on a motion.

(d) Effect on Time for Filing Opposition or Reply. Unless the order for continuance specifies otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers or reply papers to 21 and 14 days, respectively, preceding the new hearing date, unless the date for filing the papers has already passed prior to the date of the order for continuance.

(e) Withdrawal. Within 7 days after service of an opposition, the moving party may file and serve a notice of withdrawal of the motion. Upon the filing of a timely withdrawal, the motion will be taken off-calendar. Otherwise, the court may proceed to decide the motion. Withdrawal of a motion shall not remove from the court's consideration a related motion or a counter-motion made pursuant to Civil L.R. 7-3(c).

7-8. Enlargement or Shortening of Time.

(a) Requirements for Changing Time. Except as provided in Civil L.R. 7-8(b), approval of the court is required to enlarge or to shorten time to perform any act or to file any paper pursuant to the Federal Rules or these local rules.

(b) When Stipulation Permissible without Court Order. Parties may stipulate in writing, without a court order to extend the time within which to answer or otherwise respond to the complaint or to enlarge or shorten the time in matters not required to be filed or lodged with the court, providing the change will not alter the date of any hearing or conference set by the court. Such stipulations shall be promptly filed pursuant to Civil L.R. 5. Pursuant to Civil L.R. 16-5(a), parties may not stipulate without a court order to modify the disclosure requirements set forth in Civil L.R 16-5. *(Amended effective July 1, 1997)*

Commentary

When submitting a stipulation or proposed order to change a schedule which affects the date of ADR Telephone Conference, parties may obtain a new time for the conference by calling the Court's ADR Unit at (415) 522-2199.

(c) Form of Request for Court Order to Change Time. Any request to enlarge or shorten time may be made by stipulation, expedited motion pursuant to Civil L.R. 7-10, or, under urgent circumstances, by *ex parte* motion pursuant to Civil L.R. 7-11. Any request to change time which affects the date of any hearing or conference scheduled at the initiation of the court, whether made by stipulation or motion, shall be accompanied by a declaration which states:

(1) The reason for the particular enlargement or shortening of time requested;

(2) Previous time modifications in the case, whether by stipulation or court order; and

(3) The effect of the requested time modification on the schedule for the case.

7-9. Motion for Reconsideration.

(a) Leave of Court Requirement. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a judge requesting that the judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that judge on any ground set forth in Civil L.R. 7-9 (b). No party shall notice a motion for reconsideration without first obtaining leave of court to file the motion.

Cross Reference

See FRCivP 54(b) regarding discretion of court to reconsider its orders prior to entry of final judgment.

Commentary

Civil L.R. 7-9(a) does not apply to motions for reconsideration of a magistrate judge's order pursuant to 28 U.S.C. § 636(b)(1)(A).

(b) Form and Content of Motion for Leave. A motion for leave to file a motion for reconsideration shall be made in accordance with the requirements of Civil L.R. 7-10. The moving party must specifically show:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the court before entry of the interlocutory order for which reconsideration is sought. The party shall also show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or

(2) The emergence of new material facts or a change of law occurring after the time of such order; or

(3) A manifest failure by the court to consider material facts which were presented to the court before such interlocutory order.

(c) Prohibition Against Repetition of Argument. No motion for leave to file a motion for reconsideration shall repeat any oral or written argument made by the applying party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any party who violates this restriction shall be subject to appropriate sanctions.

(d) Determination of Motion. Unless otherwise ordered by the assigned judge, no response need be filed and no hearing shall be held concerning a motion for leave to file a motion to reconsider. The motion shall be determined in accordance with Civil L.R. 7-10(e).

7-10. Expedited Motion.

(a) Applicability. Relief may be sought by expedited motion when authorized by these local rules or by the assigned judge. Unless otherwise ordered by the assigned judge, expedited motions will be determined without a hearing.

Cross Reference

See Civil L.R. 7-1(a)(2); Civil L.R. 7-8(c) *"Request for Court Order to Change Time;"* Civil L.R. 7-9(b) *"Motion for Reconsideration;"* Civil L.R. 16-1(i) *"Expedited Motion to Exclude Case;"* Civil L.R. 16-2(e) *"Relief from Case Management Schedule;"* Civil L.R. 16-3(b) *"Motion for Leave to Commence Formal Discovery;"* Civil L.R. 37-1(d) *"Informal Resolution by Chambers Conference."*

(b) Obligation to Meet and Confer. Unless excused by the judge, a moving party shall deliver notice to the opposing party of the date the party intends to make an expedited motion and the relief which will be sought. The date specified shall be no less than 3 days after the notice is delivered. In the notice, the moving party shall offer to, and unless declined, shall meet and confer with the opposing party at a reasonable time, place and manner for the purpose of attempting to resolve the matter.

(c) Form and Content of Expedited Motion. Expedited motions shall contain:

(1) In one filed document, entitled "Expedited Motion," not exceeding 5 pages in length: the motion, certification of the compliance with Civil L.R. 7-10(b) and a memorandum of points and authorities, which shall contain a citation to the rule or order which permits use of an expedited motion to obtain the relief sought;

(2) The material required by Civil L.R. 7-2(c) and (d); and

(3) Unless excused, proof of service by delivery pursuant to FRCivP 5(b).

(d) Response or Opposition to Expedited Motion. Unless the assigned judge has ordered a different time, within 3 days after an expedited motion is served upon it, an opposing party may file an opposition, which shall contain:

(1) A memorandum of points and authorities, which shall comply with Civil L.R. 7-4, except not exceeding 5 pages in length;

(2) Affidavits or declarations in compliance with Civil L.R. 7-5, particularly addressing any refusal to meet and confer; and

(3) A proposed form of order.

(e) Order Regarding Expedited Motion. In the exercise of its discretion and for good cause, the judge may grant or deny an expedited motion, order further briefing or set the matter for hearing on the judge's motion calendar.

7-11. *Ex parte* Motion or Miscellaneous *Ex Parte* Request.

(a) *Ex Parte* Motion. An *ex parte* motion is a motion filed and submitted for immediate determination by the assigned judge without giving an opposing party the amount of advance notice which is otherwise required by statute, Federal Rule or local rule. Unless relieved by order of a judge for good cause shown, a party making an *ex parte* motion shall nevertheless give reasonable advance notice of the motion to an opposing party.

Cross References

See Civil L.R. 7-8(c) *"Form of Request for Order to Change Time;"* Civil L.R. 16-14(c) *"Subsequent Case Management Conferences;"* Civil L.R. 37-1(c) *"Informal Resolution by Chambers Conference;"* Civil L.R. 54-5 *"Motion for Attorney's Fees;"* Civil L.R. 56-1 *"Application to Reschedule Hearing on Summary Judgment;"* Civil L.R. 65-1 *"Temporary Restraining Orders;"* Civil L.R. 79-5(e) *"Motion to File Under Seal."*

(b) Form and Content of *Ex Parte* Motion. An *ex parte* motion shall contain:

(1) In one document entitled "*Ex Parte* Motion," which does not exceed 5 pages in length, the motion and points and authorities, which shall include citation to the rule or order which permits use of an *ex parte* motion to obtain the relief sought;

(2) Affidavits or declarations setting forth specific facts which support granting the requested relief without notice or with limited notice to the opposing party; and

(3) A proposed form of order.

(c) Miscellaneous *Ex Parte* Request. Unless otherwise ordered by the assigned judge, a party may lodge an *ex parte* request directly with the chambers of the assigned judge, under the following circumstances:

(1) A statute, Federal Rule, local rule or Standing Order authorizes making an *ex parte* request directly to a judge, and the party has complied with the applicable provisions allowing relief by *ex parte* request; or

(2) Neither a statute, Federal Rule nor local rule requires the party to proceed by noticed or expedited motion to obtain the requested relief and there is no opposing party; or

(3) The request is made in writing and is accompanied by a proposed form of order, which recites the circumstances giving rise to the need for *ex parte* relief.

Commentary

The procedure set forth in this rule may be used for unopposed requests for judicial action, such as a request to participate in court proceedings by telephone.

(d) Order Regarding *Ex Parte* Motion or Request. In the exercise of his or her discretion and for good cause, the judge may grant or deny an *ex parte* motion or request, order further notice, briefing or set the matter for hearing on the judge's motion calendar.

7-12. Stipulation.

A stipulation requesting judicial action shall be in writing signed by all affected parties or their counsel. A proposed form of order may be submitted with the stipulation and may consist of an endorsement on the stipulation of the words, "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces designated for the date and signature of the judge.

7-13. Notice Regarding Submitted Matters. *(Adopted effective July 1, 1997)*

Whenever any motion or other matter has been taken under submission for decision by a judge for greater than 120 days, a party, individually or jointly with another party, may file with the court pursuant to Civil L.R. 5-2 a notice that the matter remains under submission. If judicial action is not taken, subsequent notices may be filed at the expiration of each 120-day period thereafter until a ruling is made.

Commentary

This rule does not preclude a party from filing an earlier notice if it is warranted by the nature of the matter under submission (e.g., expedited motion or motion for extraordinary relief).

10. FORM OF PAPERS

10-1. Amended Pleadings.

Any party filing or moving to file an amended pleading shall reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference.

11. ATTORNEYS

11-1. The Bar of this Court.

(a) Members of the Bar. The bar of this court consists of attorneys of good moral character who are active members in good standing of the bar of this court prior to the effective date of these local rules and those attorneys who are admitted to membership after the effective date.

(b) Eligibility for Membership. After the effective date of these rules an applicant for admission to membership in the bar of this court must be an attorney who is an active member in good standing of the Bar of the State of California.

(c) Procedure for Admission. Each applicant for admission shall present to the clerk a sworn petition for admission in the form prescribed by the court. The petition shall be accompanied by an original certificate of membership in the Bar of the State of California. Prior to admission to the bar of this court, an attorney shall certify:

(1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the local rules of this court;

(2) Familiarity with the Alternative Dispute Resolution Programs of this court; and

(3) Understanding and commitment to abide by the Standards of Professional Conduct of this court.

(d) Admission. Upon signing the prescribed oath and paying the prescribed fee, the applicant may be admitted to the bar of the court by the clerk or a judge, upon verification of the applicant's qualifications.

(e) Certificate of Good Standing. A member of the bar of this court, who is in good standing, may obtain a Certificate of Good Standing by presenting a written request to the clerk and paying the prescribed fee.

11-2. Practice in this Court.

(a) Practice and Appearance. Except as provided in Civil L.R. 11-2(b), 11-2(c) and 11-11, only members of the bar of this court shall practice in this court. An attorney in an action in this court who is not a member of the bar of this court or who does not maintain an office within the State of California shall in the pleadings designate as co-counsel a member of the bar of this court who maintains an office within the State of California. Service of papers upon and communications with such designated counsel shall constitute notice to the party.

(b) *Pro Hac Vice*. In the discretion of the court, an attorney who is not a member of the bar of this court may appear *pro hac vice* in a particular action in this district under the following conditions:

(1) In open court or in writing, the applicant certifies on oath that he or she is an active member in good standing of the bar of a United States court or of the highest court of another State or the District of Columbia, specifying such bar;

(2) The applicant agrees to abide by the Standards of Professional Conduct set forth in Civil L.R. 11-3.

(3) An attorney who is a member of the bar of this court in good standing and who maintains an office within the State of California is designated as co-counsel pursuant to Civil L.R. 11-2(a);

(4) The application is approved by the assigned judge; and

(5) All papers filed by the attorney indicate appearance *pro hac vice*.

(c) Attorneys for the United States. Attorneys employed or retained by the United States government or any of its agencies may practice in this court in all actions or proceedings within the scope of their employment or retention by the United States.

11-3. Standards of Professional Conduct.

(a) Duties and Responsibilities. Every member of the bar of this court and any attorney permitted to practice in this court under Civil L.R. 11-2 shall:

(1) Be familiar with and comply with the standards of professional conduct required of members of the State Bar of California;

(2) Maintain respect due to courts of justice and judicial officers;

(3) Practice with the honesty, care, and decorum required for the fair and efficient administration of justice;

(4) Discharge the obligations owed to his or her clients and to the court; and

(5) Assist those in need of counsel when requested by the court.

Commentary

The California Standards of Professional Conduct are contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and decisions of any court applicable thereto.

(b) Prohibition Against Bias. The practice of law before this court must be free from prejudice and bias. Treatment free of bias must be accorded all other attorneys, litigants, judicial officers, jurors and support personnel. To implement this policy, the court shall establish an Advisory Committee on Professional Practice to promote understanding, education and voluntary peer review with respect to these matters. Any violation of this policy should be brought to the attention of the clerk or any judge for referral to the advisory committee.

Cross Reference

Civil L.R. 11-10.

(c) Prohibition against *Ex Parte* Communication. Except as otherwise provided by law, these local rules or otherwise ordered by the court, attorneys or parties to any action shall refrain from making telephone calls or writing letters or sending copies of communications between counsel to the assigned judge or the judge's law clerks or otherwise communicating with a judge or the judge's staff regarding a pending matter, without prior notice to opposing counsel.

Commentary

This rule is not intended to prohibit communications with a courtroom deputy clerk regarding scheduling.

11-4. Bar Admission Fees.

Each attorney admitted to practice under Civil L.R. 11-1 shall pay to the clerk the fee fixed by the Judicial Conference of the United States, together with an assessment of $60.00. The assessment shall be placed in the court Non-Appropriated Fund for library, educational and other appropriate uses.

11-5. Withdrawal from Case.

(a) Order Permitting Withdrawal. Counsel shall not withdraw from an action until relieved by order of court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.

(b) Conditional Withdrawal. When withdrawal by an attorney from an action is not accompanied by simultaneous appearance of substitute counsel or agreement of the party to appear *pro se*, leave to withdraw may be subject to the condition that papers may continue to be served on counsel for forwarding purposes (or on the clerk of the court, if the court so directs), unless and until the client appears by other counsel or *pro se*. When this condition is imposed, counsel shall notify the party of this condition. Any filed consent by the party to counsel's withdrawal under these circumstances shall include acknowledgment of this condition.

11-6. Suspension or Disbarment.

(a) Order to Show Cause. For good cause shown, a judge may issue an order to a member of the bar of this court to show why he or she should not be disbarred or suspended from practice in this court for failure to meet the standards for admission, practice or professional conduct. Unless otherwise ordered by a district judge, upon conviction for any felony by any court of record, a member of the bar is suspended from practice before this court, pending final resolution of the felony conviction. *(Amended effective July 1, 1997)*

(b) Grounds. An order to show cause pursuant to Civil L.R. 11-6(a) may also issue if an attorney has:

(1) Been suspended or disbarred from practice in any court; or

(2) Been convicted of a felony in any court; or

(3) Resigned from the bar of any court while an investigation into allegations of misconduct were pending; or

(4) Engaged in conduct unbecoming of a member of this court's bar; or

(5) Violated the standards of professional conduct of the State Bar of California.

(c) Assignment Procedure. Upon issuance of the order to show cause, the matter shall be assigned to another judge as a miscellaneous civil proceeding according to the Assignment Plan.

(d) Determination. The order to show cause shall be mailed to the attorney at the attorney's last known address. The attorney shall respond within 30 days of this mailing. If no timely response is received, the judge shall enter an appropriate order. If the attorney makes a timely response, after a hearing, if one is requested, the judge shall enter an appropriate order.

(e) Notice of Change in Status. Any member of the bar of this court, or any attorney permitted to practice under Civil L.R. 11-2, shall promptly notify the court if he or she has been convicted of a felony by any court of record or of any change in status as a member of the bar in another jurisdiction which would affect eligibility for practice before this court.

11-7. Disciplinary Power of the Court over Attorneys.

If an attorney practicing before this court engages in conduct which may warrant discipline or other sanctions, the court or any judge may initiate proceedings for contempt under Title 18 of the United States Code and FRCrimP 42. After reasonable notice and an opportunity to show cause to the contrary, the court may take any other appropriate disciplinary action against the attorney. In addition to the foregoing, the court or any judge may refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice.

Cross Reference

See FRCivP 11(c), 16(f), 37.

11-8. Sanctions.

(a) Sanctions for Unauthorized Practice. A person who exercises, or pretends to be entitled to exercise, any of the privileges of membership in the bar of this court, when that person is not entitled to avail themselves of such membership privileges, shall be subject to sanctions or other punishment, including a finding of contempt.

(b) Motion for Sanctions. A motion for sanctions pursuant to FRCivP 11(c) or 28 U.S.C. § 1927 or pursuant to the inherent power of the court to sanction bad-faith conduct shall comply with the following:

(1) The moving party shall certify that the motion complies with FRCivP 11(c)(1)(A);

(2) The form of the motion shall comply with Civil L.R. 7-2 and 54-5(a);

(3) The motion shall be made as soon as practicable after the alleged violation has taken place; and

(4) Unless otherwise ordered by the court, the motion may not be served later than the time provided for in Civil L.R. 54-5(a).

Cross Reference

See Civil L.R. 37-1(e) *"Motion for Sanctions."*

Commentary

Although a court ordinarily should rely on 28 U.S.C. § 1927 or the Federal Rules of Civil Procedure for imposition of sanctions, the court may rely upon its inherent power to sanction bad-faith conduct if, in the court's informed discretion, neither the statute nor the rules are adequate under the circumstances of a particular case. (See e.g., Chambers v. NASCO, Inc., 501 U.S. 32 (1991))

11-9. Prohibition Against Gratuities.

No person shall directly or indirectly give or offer to give, nor shall any judge, employee, or attaché of this court accept, any gift or gratuity directly or indirectly related to services performed by or for the court.

11-10. Peer Counseling Panel.

From time to time, the court may appoint experienced and qualified members of the bar of the court to serve on a peer counseling panel. The panel shall advise members of the bar of this court on improving the quality of their trial advocacy. At any time a judge may invite an attorney appearing in that judge's court to meet with a member of the panel for counseling on a voluntary, informal and confidential basis.

Cross Reference

See Civil L.R. 11-3(b) (peer review referral with respect to exhibiting bias or prejudice).

11-11. Student Practice.

(a) Permission to Appear. With the approval of the assigned judge, a certified law student who complies with these local rules and acts under the supervision of a member of the bar of this court may engage in the permitted activities set forth in this local rule.

(b) Permitted Activities. With respect to a matter pending before this court, a certified law student may:

(1) Negotiate for and on behalf of the client or appear at ADR proceedings, provided that the activity is conducted under the general supervision of a supervising attorney;

(2) Appear on behalf of a client in the trial of a misdemeanor or petty offense, provided the appearance is under the general supervision of a supervising attorney who is immediately available to attend the proceeding if the judge decides to require the presence of the supervising attorney and if the client is a criminal defendant, the client has filed a consent with the court; and

(3) Appear on behalf of a client in any other proceeding or public trial, provided the appearance is under the direct and immediate supervision of a supervising attorney, who is present during the proceedings.

(c) Requirements for Eligibility. To be eligible to engage in the permitted activities, a law student must submit to the clerk:

(1) An application for certification on a form established for that purpose by the court. The clerk is authorized to issue a certificate of eligibility;

(2) A copy of a Notice of Student Certification or Recertification from the State Bar of California; or a certificate from the registrar or dean of a law school accredited by the American Bar Association or the State Bar of California that the law student has completed at least one-third of the graduation requirements and is continuing study at the law school, (or if a recent graduate of the law school, that the applicant has registered to take or is awaiting results of the California State Bar Examination). The certification may be withdrawn at any time by the registrar or dean by providing notice to that effect to the court; and

(3) Certification from a member of the bar of this court that he or she will serve as a supervising attorney for the law student. The certification may be withdrawn at any time by a supervising attorney by providing notice to that effect to the court.

(d) Requirements of Supervising Attorney. A supervising attorney shall:

(1) Be admitted or otherwise permitted to practice before this court;

(2) Sign all documents to be filed by the student with the court;

(3) Assume professional responsibility for the student's work in matters before the court; and

(4) Assist and counsel the student in the preparation of the student's work in matters before the court.

(e) Termination of Privilege. The privilege of a law student to appear before this court under this rule may be terminated by the court at any time in the discretion of the court, without the necessity to show cause.

16. CASE MANAGEMENT AND PRETRIAL CONFERENCES

16-1. Case Management.

(a) Relationship to Federal Rules. These local rules implement the requirements of FRCivP 16 and 26 for management of civil cases. Unless otherwise indicated by these local rules, FRCivP 16 and 26 shall apply to all civil cases in this district.

(b) Definitions. "Scheduling," "discovery," or "status," conferences under FRCivP 16 and 26 shall be designated as "case management conferences" in this court. All statements, orders or other documents prepared in connection with such conferences shall be referred to as such. "Formal discovery" encompasses discovery under FRCivP 26-37.

(c) Categories of Cases Excluded. Except as set forth in Civil L.R.16-1(d) through (i), the following categories of actions are excluded from the requirements of FRCivP 16(b), (c), 26(a), (d) and (f) and from Civil L.R. 16-6:

(1) Bankruptcy appeals;

(2) Actions for district court review of federal agency determinations, including social security, deportation and other immigration cases, selective service cases, Freedom of Information Act and Privacy Act cases, and appeals of fee determinations under 5 U.S.C. § 504 (Equal Access to Justice Act);

(3) Prisoner civil rights actions and petitions for writs of *habeas corpus*;

(4) Actions filed by the United States to recover on a claim for a debt owed to the United States, including Medicare, defaulted student loans, veterans' benefits and actions under the Federal Debt Collection Procedures Act;

(5) Actions filed by a *pro se* plaintiff;

(6) Actions to enforce or register judgments;

(7) Reinstated or reopened cases or cases remanded from appellate courts;

(8) Actions for forfeiture or statutory penalty;

(9) Condemnation actions;

(10) Federal tax suits;

(11) Actions brought solely to enforce or quash summons or subpoenas issued by federal agencies; and

(12) Bankruptcy actions in which the reference to the bankruptcy court has been withdrawn pursuant to 28 U.S.C. § 157(d).

Cross Reference

See Civil L.R. 16-1(g) (limited exceptions for Securities Fraud Class Action Cases); and Civil L.R. 16-6 - 16-11 (case management rules in patent cases).

Commentary

Case exemption is based on information set forth on the Civil Cover Sheet.

(d) Procedure in Bankruptcy Appeals. For the category of cases enumerated in Civil L.R. 16-1(c)(1), the appellant shall serve and file a brief no later than 30 days after entry of the appeal on the docket by the clerk. The appellee shall serve and file a brief no later than 20 days after service of appellant's brief. The appellant may serve and file a reply brief no later than 10 days after service of appellee's brief. Unless the court orders otherwise, upon the completion of this briefing schedule, the matter will be deemed submitted for decision by the district court without oral argument.

(e) District Court Review of Social Security Matters. For the category of cases covered by Civil L.R. 16-1(c)(2) in which review of a social security matter is brought pursuant to 42 U.S.C. § 405(g), the defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within 90 days of receipt of service of the summons and complaint. Within 30 days of receipt of defendant's answer, plaintiff shall file a motion for summary judgment pursuant to Civil L.R. 7-2 and FRCivP 56. Defendant shall serve and file any opposition or counter-motion within 30 days of service of plaintiff's motion. Plaintiff may serve and file a reply within 14 days after service of defendant's opposition or counter-motion. Unless the court orders otherwise, upon the conclusion of this briefing schedule, the matter will be deemed submitted for decision by the district court without oral argument.

(f) U.S. Debt Collection Cases. The category of cases covered by Civil L.R. 16-1(c)(4) shall proceed as follows:

(1) On the first page of the complaint shall appear the words "Debt Collection Case;"

(2) Upon filing the complaint, the matter will be assigned to a magistrate judge for all pre-trial proceedings; and

(3) If the United States files an application under the Federal Debt Collection Procedures Act, either pre-judgment or post-judgment, such matter shall be assigned to a magistrate judge.

(g) Discovery in Private Securities Class Actions. *(Adopted effective March 25, 1997)* The following procedures shall govern discovery in all civil actions subject to the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995):

(1) Civil L.R. 16-5 shall not apply to such actions;

(2) The case management schedule established by Civil L.R. 16-2 and FRCivP 26(a)(1) and (f) shall not apply. Following entry of an order designating the lead plaintiff pursuant to 15 U.S.C. §77z-1(a)(3)(B) or 15 U.S.C. § 78u-4(a)(3)(B), the court shall schedule a case management conference. Not later than 10 days before the case management conference, counsel shall meet as specified in Civil L.R. 16-4 and FRCivP 26(f) and complete the disclosures required by FRCivP 26(a)(1), including production of unprivileged documents then reasonably available and responsive to FRCivP 26(a)(1)(B);

(3) Absent leave of court for good cause shown, all discovery shall be stayed until the date on which the court enters an order designating the lead plaintiff;

(4) The document preservation requirement established by 15 U.S.C. §77z-1(b)(2) and 15 U.S.C. § 78u-4(a)(3)(C) shall apply to a defendant as of the date on which the defendant is served with the complaint, provided that a notice to preserve documents pursuant to these provisions is also served on that defendant.

(h) Procedure in Other Excluded Cases. Unless otherwise provided in these local rules, in any case covered by Civil L.R. 16-1(c)(2), (3), (5) - (10) and (12) and 16-1(g), the assigned judge will set a Case Management Conference or issue a case management order without such conference. Formal discovery in excluded cases shall proceed only at the time, and to the extent, ordered by the judge during and after such Case Management Conference, or pursuant to any case management order issued by the judge.

(i) Expedited Motion to Exclude Case. The court may exclude a case from all or any part of the management requirements of Civil L.R. 16-2 through 16-10. Pursuant to Civil L.R. 7-10 a party may serve and file an expedited motion showing, to the satisfaction of the court, that excluding the case from the case management requirements will promote a just, speedy and inexpensive determination of the action. If excluded, the case shall thereafter be governed by Civil L.R. 16-1(h).

16-2. Case Management Schedule.

(a) Issuance and Service of Initial Schedule. Except in excluded cases, at the time the action is filed, the clerk shall issue an initial case management schedule to the party filing an action. This schedule will govern the initial case management proceedings set forth in FRCivP 16 and 26 and shall supersede the time intervals set forth in those rules. A copy of this schedule must be served by the plaintiff on each defendant, along with the supplementary materials specified by Civil L.R. 4-3. The initial case management schedule shall set deadlines for certain events, including:

Event:	**To be scheduled to occur on or before the following number of days after initial filing in this court:**
Service on at least one named defendant	Day 45
Lead trial counsel meet and confer	Day 90
Make initial disclosure	Day 100
File ADR certification	Day 110
File Case Management Statement	Day 110
Case Management Conference	Day 120

(b) Case Management Schedule in Removed Cases. When a case is removed from a state court to this court, upon the filing of the notice of removal the clerk shall issue an initial case management schedule to the defendant. The case management schedule for removed cases shall conform to the time deadlines set forth in Civil L.R. 16-2(a), except that the deadlines shall run from the date of the filing of the notice of removal. The removing defendant(s) shall serve the parties in the case with a copy of the supplementary materials in Civil L.R. 4-3. Unless ordered otherwise by the court, the filing of a motion for remand does not relieve the parties of any obligations under this rule.

(c) Case Management Schedule in Transferred Cases. When a civil action is transferred to this district, the clerk shall issue an initial case management schedule to the plaintiff. The case management schedule for transferred cases shall conform to the time deadlines set forth in Civil L.R. 16-2(a), except that the deadlines shall run from the date the case is assigned to a judge of this court, excepting such events as have occurred before transfer. Plaintiff shall serve the parties in the case with a copy of the supplementary materials in Civil L.R. 4-3(b) - (d).

(d) Case Management Schedule and ADR Schedule. Unless otherwise ordered by the assigned judge, parties shall simultaneously proceed according to the initial case management schedule issued by the clerk and any schedule set by the court concerning ADR. All requirements set by the ADR Local Rules for such a case shall apply unless relief is otherwise granted pursuant to those local rules.

Cross Reference

See ADR L.R. 2-3 *"Referral to ADR Program."*

(e) Relief from Case Management Schedule. By serving and filing an expedited motion with the assigned judge pursuant to Civil L.R. 7-10, a party, including a party added later in the case, may seek relief from an obligation imposed by FRCivP 16, 26(a)(1), 26(e) or the initial case management schedule issued by the clerk. The motion must:

(1) Describe the circumstances which support the request;

(2) Indicate whether any other party joins or objects to the request for relief;

(3) Be accompanied by a proposed revised case management schedule; and

(4) If applicable, indicate any changes required in the ADR program or schedule in the case.

(f) Limitations on Stipulations. Any stipulation, which would vary the date of conferences or hearings with the judge pursuant to Civil L.R. 16, shall have no effect unless approved by the assigned judge. Any stipulation shall comply with Civil L.R. 7-12. The stipulation shall be lodged in the court before the date for the conference or hearing affected by the stipulation.

Cross Reference

Civil L.R. 7-8(b) and 16-5(a) prohibit modifications of the initial disclosure under the federal and local rules by stipulation.

16-3. Stay of Formal Discovery.

(a) Stayed Except by Stipulation or Order. No formal discovery, including discovery from nonparties, shall be initiated by any party until after the meet and confer session pursuant to Civil L.R. 16-4, except by stipulation by all named plaintiffs and all named defendants who have been served, or upon order of the court.

(b) Motion for Leave to Commence Discovery. Relief from the stay of formal discovery (e.g. to the extent discovery is necessary to prepare for a jurisdictional or venue motion or an *ex parte* motion for extraordinary relief) may be sought under Civil L.R.7-10.

16-4. Meet and Confer by Lead Trial Counsel.

Unless otherwise ordered, no later than the date specified by the case management schedule, lead trial counsel shall meet in person and confer for the purposes specified in FRCivP 26(f) and Civil L.R. 16-5 through 16-8.

16-5. Initial Disclosure.

(a) Governing Procedure. Except as set forth in this rule, or as otherwise ordered by the assigned judge in a particular case, initial disclosures shall be governed by FRCivP 26(a)(1) and 26(e). The obligations to make initial disclosure under the Federal Rules or these local rules may not be modified or avoided by stipulation. A party may file a motion under Civil L.R. 16-2(e) for relief from the obligations to make initial disclosure. Unless otherwise ordered, the filing of such a motion does not stay initial disclosure obligations.

(b) Scope of Initial Document Disclosure. In addition to satisfying the obligations imposed by FRCivP 26(a)(1)(B), at or within 10 days after the meet and confer, each party shall actually produce to all other parties all of the unprivileged documents which are then reasonably available and which tend to support the positions that the disclosing party has taken or is reasonably likely to take in the case.

(c) Time for Initial Disclosure. Unless excused by the assigned judge pursuant to Civil L.R. 16-2(e), the deadline for making initial disclosure shall be the date set by the clerk in the initial case management schedule under Civil L.R. 16-2.

(d) Certification of Disclosure. Any initial or supplemental disclosure pursuant to Civil L.R. 16-5(b)-(e) shall be accompanied by a cover document identifying the disclosure (e.g. "Initial Disclosure of [name of party]" or "First Supplemental Disclosure of [name of party]"). This cover document shall be signed by an attorney of record, who shall certify that to the best of his or her knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the disclosure is complete and correct as of the time it is made.

(e) Production of Voluminous Documents.

(1) A party producing 100 or fewer pages of documents pursuant to Civil L.R. 16-5, shall produce the original documents and present them for inspection and copying by the other parties or may make copies and provide them to the other parties.

(2) A party whose production pursuant to Civil L.R. 16-5(b) would include more than 100 pages of documents shall, no fewer than 7 days before such production, so notify the other parties. Each party to whom the production would be made may elect to:

(A) Inspect the documents to identify those it will arrange to have copied; or

(B) Request the disclosing party to copy and forward only specified categories of the documents; or

(C) Request the disclosing party to copy and forward all of the documents.

(3) A party copying documents at the request of another party under Civil L.R. 16-5(e)(1) or (2) shall be entitled to immediate reimbursement from the receiving parties at a reasonable rate. A party's request for copies of fewer than all of the documents subject to production under Civil L.R. 16-5 does not waive that party's right subsequently to inspect and obtain copies of the remaining documents without the need for a formal request pursuant to FRCivP 34.

(f) Parties Served or Added Before the Initial Conference. Any party added and served or which joins the action before the Case Management Conference shall comply with the pretrial schedule served with the complaint. For good cause, such party may file a motion for relief from the case management schedule pursuant to Civil L.R. 16-2(e).

(g) Parties Served or Added After the Initial Conference. When a party is added and served or joins in the case after the initial Case Management Conference, that party shall be subject to the schedules for disclosure and case management specified by the assigned judge's Case Management Order. For good cause, such party may file a motion for relief from the case management schedule pursuant to Civil L.R. 16-2(e).

(h) Privilege Log. In connection with disclosure or formal discovery of documentary materials, where a party withholds disclosure or production of documents on the ground of privilege, the parties may designate or the judge may direct an appropriate method for creating a log of such documents pursuant to FRCivP 26(b)(5).

16-6. Disclosures and Pretrial Proceedings in Patent Cases. *(Adopted effective July 1, 1997)*

(a) Scope. In addition to complying with Civil L.R. 16-5 and FRCiv P 26, in all civil actions filed in this court which include a claim of patent infringement, or which seek a declaratory judgment that a patent is not infringed or is invalid, the parties shall also comply with the disclosure requirements and procedures set forth in Civil L.R. 16-6 through 16-11.

(b) Confidentiality. If any document or information produced under Civil L.R. 16-6 - 16-11, is deemed confidential by the producing party and if the court has not entered a protective order, until a protective order is issued by the court, the document shall be marked "confidential" by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney of record. If a party is not represented by outside attorney, disclosure of the confidential document or information shall be limited to a designated "in-house" attorney. The attorney to whom disclosure of a confidential document or information is made under this local rule shall keep it confidential and use it only for purposes of litigating the case.

(c) Certification and Admissibility of Initial Disclosures. All statements, disclosures or charts filed or served in accordance with these local rules must be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure or chart is complete and correct at the time it is made.

(d) Duty to Supplement Disclosures. Unless otherwise ordered by the court, disclosures or charts governed by these local rules are subject to the duty of supplementation of FRCivP 26(e).

(e) Admissibility of Disclosures. Unless otherwise ordered by the court, statements, disclosures or charts governed by this local rule shall be admissible as evidence during the course of the action.

16-7. Initial Disclosure of Asserted Claims and Prior Art in Patent Cases. *(Adopted effective July 1, 1997)*

(a) Initial Disclosure of Asserted Claims. No later than 45 days after filing a pleading that includes a claim for patent infringement, the party claiming patent infringement, except in those cases described in Civil L.R. 16-8, must serve on all parties an "Initial Disclosure of Asserted Claims" in conformity with Civil L.R. 16-7(b) and must produce or make available for inspection and copying the documents described in Civil L.R. 16-7(c).

(b) Content of Initial Disclosure of Asserted Claims. Separately for each opposing party, the "Initial Disclosure of Asserted Claims," shall contain the following information:

(1) Each claim of each patent in suit that is allegedly infringed by each opposing party;

(2) Separately for each allegedly infringed claim, each accused apparatus, product, device, process, method, act or other instrumentality ("accused instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device or apparatus which, when used, results in the practice of the claimed method or process;

(3) The date of conception and the date of reduction to practice of each asserted claim.

(c) Document Production Accompanying Initial Disclosure of Asserted Claims. At the time of filing the "Initial Disclosure of Asserted Claims," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying all documents relating to:

(1) Any offers to sell each claimed invention prior to the date of application for the patent; and

(2) Research, design, and development of each claimed invention.

(d) Initial Disclosure of Prior Art. No later than 55 days after service upon it of an "Initial Disclosure Of Asserted Claims," each opposing party shall serve on all parties an "Initial Disclosure Of Prior Art" which conforms to Civil L.R. 16-7(e) and must produce or make available for inspection and copying the documents described Civil L.R. 16-7(f).

(e) Content of Initial Disclosure of Prior Art. The Initial Disclosure of Prior Art shall contain the following information:

(1) Each item of prior art that the party contends anticipates the claim or renders it obvious;

(2) For each item of prior art, whether it anticipates the claim or renders it obvious, if a combination of prior art references renders a claim obvious, that combination must be identified.

(3) The identification of prior art must be as specific as possible. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication, shall be identified by its title, date of publication and, where feasible, its author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used, the date the offer or use took place, and the identity of the person or entity which made the use or which made and received the offer.

(f) Document Production Accompanying Initial Disclosure of Prior Art. At the time of filing the "Disclosure of Prior Art," each opposing party must produce or make available for inspection and copying any source code, specifications, schematics, flow charts, artwork, formulas or other documentation on any accused instrumentality.

16-8. Initial Disclosure Requirement in Patent Cases for Declaratory Judgment. *(Adopted effective July 1, 1997)*

In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed or is invalid, Civil L.R. 16-7(a) - (d) shall not apply. Within 45 days of filing such a pleading the party seeking the declaratory judgment shall initiate the disclosure process by serving on each opposing party a statement entitled "Initial Disclosure Of Prior Art" which conforms to Civil L.R. 16-7(e) and by producing or making available for inspection and copying the documents described Civil L.R. 16-7(f). This Civil L.R. 16-8 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed or is invalid is filed in response to a complaint for infringement of the same patent.

16-9. Claim Chart in Patent Case. *(Adopted effective July 1, 1997)*

(a) Service and Content of Claim Chart. No later than 70 days after service upon it of an "Initial Disclosure Of Prior Art," under Civil L.R. 16-7(d) or 16-8, any party claiming patent infringement shall serve upon all parties a "Claim Chart." Separately, with respect to each opposing party against whom a claim of patent infringement is made, the Claim Chart must contain the following information:

(1) Each claim of any patent in suit which the party alleges was infringed;

(2) The identity of each apparatus, product, device, process, method, act or other instrumentality of each opposing party which allegedly infringes each claim;

(3) Whether such infringement is claimed to be literal or under the doctrine of equivalents;

(4) Where each element of each infringed claim is found within each apparatus, product, device, process, method, act or other instrumentality; and

(5) If a party claiming patent infringement wishes to preserve the right to rely on its own apparatus, product, device, process, method, act or other instrumentality as evidence of commercial success, the party must identify, separately for each claim, each such apparatus, product, device, process, method, act or other instrumentality that incorporates or reflects that particular claim.

(b) Response Chart. No later than 60 days after service of upon it of a "Claim Chart," each party opposing a claim of patent infringement, shall serve on all parties a "Response Chart" which must contain the following information:

(1) The identity of each item of prior art that anticipates the claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b), shall be identified by the item offered for sale or publicly used, the date the offer or use took place, the identity of the person or entity which made the use or which made and received the offer; and

(2) Whether it anticipates the claim or renders it obvious. If a combination of prior art references makes a claim obvious, that combination must be identified;

(3) Where, specifically, within each item of prior art each element of the claim is found;

(4) All grounds of invalidity other than anticipation or obviousness of any of the claims listed in Claimant's Claim Chart. This identification must be as specific as possible. For example, if a best mode defense is raised, the adverse party must set forth with particularity what constitutes the inventor's best mode, specifically citing information or materials obtained in discovery to the extent feasible. If an enablement defense is raised, the adverse party must set forth with particularity what is lacking in the specification to enable one skilled in the art to make or use the invention; and

(5) If the claimant has alleged willful infringement, the date and a document reference number of each opinion of counsel upon which the party relies to support a defense to the willfulness allegation, including but not limited to, issues of validity, and infringement of any patent in suit.

(c) Amendment to Claim Chart. Amendment of a Claims Chart or a Response Chart may be made only on stipulation of all parties or by order of the court, which shall be entered only upon a showing of excusable subsequent discovery of new information or clearly excusable neglect.

16-10. Claim Construction Proceedings in Patent Cases. *(Adopted effective July 1, 1997)*

(a) Proposed Claim Construction Statement. No later than 70 days after service of the "Initial Disclosure of Prior Art," pursuant to Civil L.R. 16-7(d), each party claiming patent infringement must serve on all parties a "Proposed Claim Construction Statement," which shall contain the following information for each claim in issue:

(1) Identification of any special or uncommon meanings of words or phrases in the claim;

(2) All references from the specification that support, describe, or explain each element of the claim;

(3) All material in the prosecution history that describes or explains each element of the claim; and

(4) Any extrinsic evidence that supports the proposed construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law.

(b) Response to Proposed Claim Construction Statement. No later than 60 days after service upon it of a Proposed Claim Construction Statement, each opposing party must serve on each party a "Response to Proposed Claim Construction Statement." The response shall contain the following information:

(1) Identification of any special or uncommon meanings of words or phrases in the claim in addition to or contrary to those disclosed pursuant to Civil L.R. 16-10(a)(1);

(2) All references from the specification that support, describe, or explain each element of the claim in addition to or contrary to those disclosed pursuant to Civil L.R. 16-10(a)(2);

(3) All material in the prosecution history that describes or explains each element of the claim in addition to or contrary to those disclosed pursuant to Civil L.R. 16-10(a)(3); and

(4) Any extrinsic evidence that supports the proposed construction of the claim, including, but not limited to, expert testimony, inventor testimony, dictionary definitions and citations to learned treatises, as permitted by law.

16-11. Claim Construction Hearing in Patent Cases. *(Adopted effective July 1, 1997)*

(a) Meet and Confer. No later than 21 days after the "Responses to Proposed Claim Construction Statement" has been served, all parties shall meet and confer for the purpose of preparing a Joint Claim Construction Statement pursuant to Civil L.R. 16-11(b).

(b) Joint Claim Construction Statement. No later than 15 days after the parties meet and confer pursuant to Civil L.R. 16-11(a) the parties must complete and file a Joint Claim Construction Statement, which shall contain the following information:

(1) The construction of those claims and terms on which the parties agree;

(2) Each party's proposed construction of each disputed claim and term, supported by the same information that is required under Civil L.R. 16-10 (a) and (b);

(3) The jointly agreeable dates for a claims construction hearing on all disputed issues of claim construction. The suggested dates shall take into consideration the briefing schedule pursuant to Civil L. R. 16-11(d) and the calendar of the assigned judge; and

(4) For any party who proposes to call one or more witnesses at the claims construction hearing, the identity of each such witness, the subject matter of each witness' testimony and an estimate of the time required for the testimony.

(c) Claim Construction Hearing. No later than 30 days after the parties have filed their Joint Claims Construction Statement, the court will send a notice of the date and time of a Claim Construction Hearing. Unless the notice states otherwise, the parties shall be prepared to call at the hearing all the witnesses they identified under Civil L.R. 16-11(b)(4).

(d) Briefing Schedule. With respect to a Claim Construction Hearing, the parties shall comply with the following briefing schedule:

(1) Not less than 35 days before the hearing, the party claiming patent infringement must serve and file its opening brief and supporting evidence;

(2) Not less than 21 days before the hearing, each opposing party must serve and file its responsive brief and supporting evidence; and

(3) Not less than 14 days before the hearing, the party claiming patent infringement must serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

16-12. ADR Certification.

(a) Content of Certification. Unless otherwise ordered, no later than the date specified in the initial case management schedule, counsel and client shall sign, serve and file a certification of discussion and consideration of ADR options. The certification shall be made in conformance with Civil L.R. 16-12(b) or shall be filed on a form established for that purpose by the court and in conformity with the instructions approved by the court. If the client is a government or governmental agency, the certificate shall be signed by a person who meets the requirements of Civil L.R. 3-9(c). Counsel and client shall certify that both have:

(1) Read the brochure entitled Dispute Resolution Procedures in the Northern District of California;

(2) Discussed the available dispute resolution options provided by the court and private entities; and

(3) Considered whether their case might benefit from any of the available dispute resolution options.

(b) Filing of ADR Certification. Parties may certify their discussion of ADR Options in their joint case management statement filed under Civil L.R. 16-12, in lieu of executing, serving, and filing separate certificates. In all other respects, such certification shall comply with the requirements of this local rule, including the requirement that the certification be signed by both client and counsel.

(c) Use of ADR in the Northern District. It is the policy of the court to assist parties involved in civil litigation to resolve their disputes in a just, timely and cost-effective manner. The court has created and makes available its own Alternative Dispute Resolution (ADR) programs and has promulgated local rules for its ADR programs. The court also encourages civil litigants to consider use of ADR programs operated by private entities. At any time after an action has been filed, the court on its own initiative or at the request of one or more parties may refer the case to a judicially hosted settlement conference or to one of the court's other ADR programs.

16-13. Case Management Statement and Proposed Order.

(a) Joint or Separate Case Management Statement. Unless otherwise ordered, no later than the date specified in the case management schedule, counsel shall file a joint case management statement and proposed order on the form, and in conformity with, the instructions approved by the court. If preparation of a joint statement will cause undue hardship, the parties shall serve and file separate statements, which must describe the undue hardship.

Commentary

The form and instructions for preparation of the Case Management Statement and Proposed Order are available from the clerk of court and are part of the materials provided to the filing party for service on all parties in the action pursuant to Civil L.R. 4-3.

(b) Case Management Statement in Class Action. Any party seeking to maintain a case as a class action shall include in the case management statement required by Civil L.R. 16-13(a) the following additional information:

(1) The specific paragraphs of FRCivP 23, under which the action is maintainable as a class action;

(2) A description of the class or classes in whose behalf the action is brought;

(3) Facts showing that the party is entitled to maintain the action under FRCivP 23(a) and (b); and

(4) A proposed date for the court to consider whether the case can be maintained as a class action.

16-14. Case Management Conference.

(a) Initial Case Management Conference. Unless otherwise ordered, no later than the date specified in the case management schedule, the court will conduct an initial Case Management Conference. The assigned district judge may designate a magistrate judge to conduct the initial Case Management Conference and other pretrial proceedings in the case. Unless excused by the judge, lead trial counsel for each party must attend the initial Case Management Conference. Pursuant to Civil L.R. 7-11(c), requests to participate in the conference by telephone must be made by *ex parte* request at least 5 days before the conference or in accordance with the Standing Orders of the assigned judge.

(b) Initial Case Management Order. After a Case Management Conference, the judge may enter a case management order or sign the joint case management statement and proposed order submitted by the parties. Among other things, such orders will identify the principal issues of the case, review the parties' disclosure and document production, review motions to be filed, establish a discovery plan, set appropriate limits on discovery and consider the propriety of referring the case to ADR. In addition, unless otherwise ordered, as part of the initial or a subsequent case management order, the court may establish deadlines for:

(1) Commencement and completion of any ADR proceedings;

(2) Disclosure of proposed expert or other opinion witnesses pursuant to FRCivP 26(a)(2), as well as supplementation of such disclosures;

(3) Conclusion of pretrial discovery and disclosure;

(4) Hearing pretrial motions;

(5) Counsel to meet and confer to prepare joint pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material;

(6) Filing joint pretrial conference statement and proposed order;

(7) Lodging exhibits and other trial material, including copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit shall be premarked for identification . Upon request, a party shall make the original or the underlying documents of any exhibit available for inspection and copying;

(8) Serving and filing briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues;

(9) In jury cases, serving and filing requested voir dire questions, jury instructions, and forms of verdict; or in court cases, serving and lodging proposed findings of fact and conclusions of law;

(10) Serving and lodging statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal;

(11) A date by which parties objecting to receipt in evidence of any proposed testimony or exhibit identified pursuant to Civil L.R. 16-15(b)(7) or (10) must advise and confer with the opposing party with respect to resolving such objection;

(12) A final pretrial conference and any necessary court hearing to consider unresolved objections to proposed testimony or exhibits;

(13) A trial date and schedule;

(14) Determination of whether the case shall be maintained as a class action; and

(15) Any other activities appropriate in the management of the case, including use of procedures set forth in the Manual for Complex Litigation.

(c) Subsequent Case Management Conferences. Pursuant to FRCivP 16, the assigned judge or magistrate judge may, *sua sponte* or pursuant to request by a party made in accordance with Civil L.R. 7-11(c), schedule subsequent case management conferences during the pendency of an action. Each party shall be represented at such subsequent case management conferences by counsel having authority with respect to matters under consideration.

(d) Subsequent Case Management Statements. Unless otherwise ordered, no later that 10 days prior to any subsequent case management conference, the parties shall meet and confer and file a joint case management statement, indicating progress or changes which have occurred since the last statement.

16-15. Pretrial Conference.

(a) Required Meeting and Disclosure Prior to Pretrial Conference. In lieu of disclosure under FRCivP 26(a)(3), at least 30 days before the final pretrial conference, lead counsel who will try the case shall meet and confer with respect to:

(1) Preparation and content of the joint pretrial conference statement;

(2) Preparation and exchange of pretrial materials to be served and lodged pursuant to Civil L.R. 16-15(b);

(3) Resolution of any differences between the parties regarding Civil L.R. 16-15(a)(1) or 16-15(a)(2). To the extent such differences are not resolved, parties will present the issue in the pretrial conference statement so that the judge may rule on the matter during the pretrial conference; and

(4) Settlement of the action.

(b) Pretrial Conference Statement. Unless otherwise ordered, not less that 10 days prior to the pretrial conference, the parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Disputed Legal Issues.

(A) Points of Law. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions. Unless otherwise ordered, parties should cite to briefs served and lodged pursuant to Civil L.R. 16-14(b)(8) setting forth briefly the nature of each party's contentions concerning each disputed point of law, including procedural and evidentiary issues.

(B) Proposed Conclusions of Law. If the case is to be tried without jury, unless otherwise ordered, parties should briefly indicate objections to proposed conclusions of law lodged pursuant to Civil L.R. 16-14(b)(9).

(4) Trial Preparation.

(A) Witnesses to be Called. In lieu of FRCivP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Exhibits, Schedules and Summaries. In lieu of FRCivP 26(a)(3)(C), a list of all documents and other items to be offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a brief statement following each, describing its substance or purpose and the identity of the sponsoring witness. Unless otherwise ordered, parties will indicate their objections to the receipt in evidence of exhibits and materials lodged pursuant to Civil L.R. 16-14(b)(7) and that counsel have conferred respecting such objections pursuant to Civil L.R. 16-14(b)(11).

Cross Reference

See Civil L.R. 30-3(b) *"Sequential Numbering of Exhibits."*

(C) Trial. The trial date scheduled pursuant to Civil L.R. 16-14(b)(13). Unless otherwise ordered, if the trial is to be to a jury, parties will indicate objections to use of materials served and filed pursuant to Civil L.R. 16-14(b)(9) (proposed voir dire questions, jury instructions and verdict forms) and that counsel have conferred respecting such objections pursuant to Civil L.R. 16-14(b)(11).

(D) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(E) Use of Discovery Responses. In lieu of FRCivP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission, pursuant to Civil L.R. 16-14(b)(10). Counsel shall indicate any objections to use of these materials and that counsel has conferred respecting such objections pursuant to Civil L.R. 16-14(b)(11).

(F) Further Discovery or Motions. A statement of all remaining discovery or motions, including motions in limine.

(5) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(B) Consent to Trial Before a Magistrate Judge. A statement whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(C) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.

(D) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

(6) Miscellaneous. Any other subjects relevant to the trial of the action, or material to its just, speedy and inexpensive determination.

(c) Pretrial Order. The assigned judge may make such pretrial orders at or following the pretrial conference as may be appropriate, and such orders shall control the subsequent course of the action as provided in FRCivP 16.

23. CLASS ACTIONS

23-1 Private Securities Actions. *(Adopted effective March 25, 1997)*

(a) Filing and Serving Required Notices. Not later than 20 days after filing the complaint in any action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the party filing that complaint and seeking to serve as lead plaintiff shall serve and file a copy of any notice required by the Act.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

(b) Motion to Serve as Lead Plaintiff. Not later than 60 days after publication of the notices referred to in Civil L.R. 23.1(a), any party seeking to serve as lead plaintiff shall serve and file a motion to do so. The motion shall set forth whether the party claims entitlement to the presumption set forth in section 27(a)(3)(B)(iii)(I) of the Securities Act or section 21D(a)(3)(B)(iii)(I) of the Securities Exchange Act or that the presumption is rebutted and the reasons therefor.

Commentary

A Model Stipulation and Proposed Consolidation Order for Securities Fraud Class Actions are available from the clerk of court in civil actions containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), and are part of the materials provided to the filing party for service on all parties in the action pursuant to Civil L.R. 4-3.

23-2. Electronic Posting of Certain Documents Filed in Private Securities Actions. *(Adopted effective March 25, 1997)*

(a) Electronic Posting. All postable documents, as defined in subsection (b) of this rule, required to be filed pursuant to Civil L.R. 5-1 in any private civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), shall be timely posted at a Designated Internet Site. The party or other person filing such document shall be responsible for timely posting.

(b) Postable Documents. For purposes of this Rule, "postable documents" shall mean:

(1) Any pleading specified in FRCivP 7(a);

(2) Any briefs, declarations or affidavits filed pursuant to FRCivP 12, 41 or 56;

(3) Any briefs, declarations or affidavits relating to certification of a class pursuant to FRCivP 23;

(4) Any briefs, declarations or affidavits relating to designation of a lead plaintiff pursuant to 15 U.S.C. §§ 77z-1(a)(3) or 78u-4(a)(3);

(5) Any report, statement, declaration or affidavit of an expert witness designated to testify whether filed pursuant to FRCivP 26(a)(2)(B), or otherwise;

(6) Any pretrial conference statement pursuant to Civil L.R. 16-16(B), pretrial briefs or motions in limine;

(7) Any filing concerning approval of a settlement of the action; and

(8) Any filing concerning any request for attorney fees or costs.

(9) Provided however, that no person shall be required by this Rule to post any:

(A) Document which is filed under seal with the written consent of the court, whether pursuant to a pre-existing written confidentiality order, or otherwise; or

(B) Exhibits, appendixes or other attachments to documents otherwise required to be posted; or

(C) Briefs, declarations or affidavits which are not available in electronic form in the possession, custody or control of the person filing the document, or such person's counsel, agents, consultants or employees.

(c) Timely Posting. A postable document shall be deemed timely posted at a Designated Internet Site in accordance with subsection (a) of this rule if, on the same day that the document is filed with this court:

(1) An electronic form of the filing, prepared in any commonly used word processing format, is forwarded to a Designated Internet Site by electronic transmission, e-mail, physical delivery of a diskette, or any other means acceptable to that Designated Internet Site, provided that such electronic delivery occurs by means reasonably calculated to result in delivery by the third day following the filing; and

(2) The certificate of service required pursuant to Civil L.R. 5-4 states that service in compliance with this rule has been accomplished to a Designated Internet Site that is identified by its physical and electronic addresses.

(d) Designated Internet Site. "Designated Internet Site" for purposes of this rule shall mean an Internet site that:

(1) Is accessible at no cost to all members of the public who are otherwise able to access the Internet through commonly used web browsers;

(2) Charges no fee to any party, intervenor, amicus or other person subject to the provisions of this rule;

(3) Places no restrictions on any person's ability to copy or to download, free of charge, any materials posted on the site pursuant to the requirements of this rule;

(4) Maintains and responsibly operates a notification feature whereby any member of the public can request to receive e-mail notification, at no charge, of any posting of materials to the Designated Internet Site;

(5) Undertakes to post on its site within two days of receipt of the electronic copy described in Civil L.R. 26-2(c)(1) of this rule all filings forwarded to it in compliance with the provisions of Civil L.R. 26-2(a);

(6) Undertakes to provide e-mail notification within one day of receipt of the electronic copy described in Civil L.R. 26-2(c)(1) of this rule to all other Designated Internet Sites informing them of the posting of any materials related to securities class action litigation;

(7) Maintains and publicizes a physical address to which the United States Postal Service or other commonly used delivery services can make physical delivery of documents, and/or diskettes, an Internet address in the form of an operational Uniform Resource Location ("URL"), and an e-mail address to which persons subject to paragraph (a) of this rule can transmit electronic copies of documents subject to the posting requirement of this rule;

(8) Undertakes to disclose prominently the URLs, physical addresses, and facsimile numbers of all other Designated Internet Sites known to it; and

(9) Submits to the Secretary of the Securities and Exchange Commission (the "Secretary") a statement, signed by a member of the bar that: identifies the Designated Internet Site through its URL; provides the name, address, telephone number, facsimile number and e-mail address of one or more persons responsible for operation of the site; and attests that the site satisfies the requirements of the rule and that it will promptly notify the Secretary should it cease to be a Designated Internet Site.

(e) Suspension of Posting Requirements. Compliance with this rule shall not be required for any document filed at any time during which no Designated Internet Site is operational.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

Commentary

The Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), (the "Reform Act") contains several provisions designed to disseminate broadly to investors information relating to the initiation and settlement of class action securities fraud litigation in the federal courts. See, e.g., 15 U.S.C. §§ 77z-1(a)(3)(A), 77z-1(a)(7), 78u-4(a)(3)(A), 78u-4(a)(7). The legislative history of that Act makes clear that Congress intended that litigants also make use of "electronic or computer services" to notify class members. H.R. Conf. Rep. 369, 104th Cong., 1st Sess. 34 (1995).

Notification to class members traditionally involves a combination of mailings and newspaper advertisements that are expensive, employ small type, convey little substantive information and that may be difficult for members of the class to locate. The rapid growth of Internet technology provides a valuable means whereby extensive amounts of information can be communicated at low cost to all actual or potential members of a class, as well as to other members of the public. Consistent with Congressional intent to promote the use of "electronic or computer services", this rule seeks to employ Internet technology to disseminate broadly information related to class action securities fraud litigation.

Civil L.R. 23-2 is designed to capitalize on the potentially substantial benefits of the Internet for class members, counsel, and the court while imposing *de minimus* costs. Compliance is simple and relatively cost less: it is accomplished by sending an e-mail copy or diskette of a filing that already exists on a wordprocessor to a Designated Internet Site which charges no fee for the services it renders. The rule specifically does not require that counsel create electronic versions of filings, attachments, exhibits, or other materials that do not already exist in readily accessible machine-readable form. Posting to a Designated Internet Site is not a substitute for other applicable filing requirements.

The benefits of Internet access to these documents are several. Clients will be able easily to monitor developments in litigation pursued on their behalf. Courts and counsel will be able to observe litigation developments over a broader span of disputes and thereby become better informed with regard to emerging issues in this complex area of the law. With addition of full text search engines to the data contained in Designated Internet Sites, courts, litigants, and class members alike will be able to search efficiently the most significant filings in class action securities fraud litigation for issues and facts relevant to their analyses. Search tools now limited to the analysis of judicial decisions will thus become applicable to the record in a case itself.

The court is informed that the Securities and Exchange Commission is considering maintaining links to Designated Internet Sites that have provided notice to the Commission pursuant to the provisions of section (d)(9).

The court recognizes the novel nature of this posting requirement. The court therefore proposes to adopt the rule on a temporary basis and will regularly review its operation and any difficulties that may arise.

26. GENERAL PROVISIONS GOVERNING DISCOVERY

26-1. Relationship Between Disclosure and Formal Discovery.

(a) Policy in Favor of Voluntary Disclosure. Whenever feasible counsel should attempt to exchange information informally, as well as by initial and supplemental disclosures required by Civil L.R. 16.

(b) Disclosure Obligations Covered Under Case Management. Pursuant to FRCivP 26(a), (d), and (f), the obligations of the parties to disclose, plan for discovery and coordinate disclosure with formal discovery are specified in Civil L.R. 16.

Cross Reference

See Civil L.R. 16-1(b) *"Case Management; Definitions,"* (formal discovery defined).

26-2. Necessity of Court Order before Filing Discovery or Disclosure Material.

(a) Discovery Material. In accordance with FRCivP 5(d), notices of depositions, interrogatories, requests for documents, requests for admissions and answers and responses thereto shall not be filed with the clerk unless ordered by a judge of this court or as provided in Civil L.R. 26-4.

(b) Disclosure Material. Notwithstanding FRCivP 26(a)(4), disclosures made pursuant to FRCivP 16 and 26 shall not be filed with the clerk unless ordered by a judge of this court or as provided in Civil L.R. 26-4.

Cross Reference

Civil L.R. See 5-1 *"Filing with the Court."*

26-3. Custodian of Discovery Documents.

The party propounding interrogatories, requests for production of documents or requests for admissions shall retain the original of the discovery request and the original response. That party shall be the custodian of these materials.

Commentary

Counsel should consider stipulating to sharing diskettes or other computer-readable copies of discovery requests such as interrogatories and requests for production of documents and responses to such requests to save costs and to facilitate expeditious pretrial discovery.

26-4. Use of Discovery Material for Motion or Trial.

The relevant portions of any discovery material needed in connection with a pretrial proceeding shall be filed as an exhibit to the proceeding. The relevant portions of any discovery material needed at trial or evidentiary hearing shall be introduced in open court. Upon the request of the court reporter/recorder, a copy of any portion of a deposition transcript or other transcript read into the record at trial or other hearing shall be provided to the court reporter/recorder by the offering party.

Cross Reference

FRCivP 32(c) & 43(a)

26-5. Discovery Cut-Off.

Unless otherwise specified, as used in any order of this court or in these local rules, a "discovery cut-off" is the date by which all responses to written discovery are due and by which all depositions shall be concluded. Discovery requests that call for responses or depositions after the discovery cut-off are not enforceable except by order of the court for good cause shown. No motions to compel discovery may be filed later than 10 days after the discovery cut-off.

Cross Reference

See Civil L.R. 37 "*Compelling Discovery or Disclosure.*"

Commentary

Counsel should initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this local rule.

30. DEPOSITIONS

30-1. Number of Depositions.

No more depositions than permitted under FRCivP 30(a) may be taken except pursuant to stipulation or order of the court. Any memorandum in support of a motion for leave to take additional depositions shall set forth the additional proposed depositions and the reasons for their being taken.

30-2. Consultation Regarding Scheduling.

Before noticing a deposition, the noticing party shall consult with opposing counsel about the deposition schedule so that the convenience of counsel, witnesses and parties may be accommodated, if possible.

30-3. Numbering of Deposition Pages and Exhibits.

(a) Sequential Numbering of Pages. The pages of the deposition of a single witness, even if taken at different times, shall be numbered sequentially.

(b) Sequential Numbering of Exhibits. Documents identified as exhibits during the course of depositions and at trial shall be labeled as follows:

> **(1)** The exhibits shall be numbered sequentially. Only one exhibit number shall be assigned to any given document. The exhibit number assigned to the document when it is first identified as an exhibit shall be maintained for that document throughout the litigation. Counsel shall meet and confer to assign blocks of numbers to meet the needs of the case. If through inadvertence, the same exhibit is marked with different exhibit numbers, the parties shall assign the lowest such exhibit number to the exhibit and conform all references to the exhibit accordingly.
>
> **(2)** If the pages of an exhibit are not numbered internally and it is necessary to identify pages of an exhibit, then each page shall receive a page number designation preceded by the exhibit number (e.g., Exhibit 100-2, 100-3, 100-4).

(3) Any exhibit which is an exact duplicate of an exhibit previously numbered shall bear the same exhibit number regardless of which party is using the exhibit. Any version of any exhibit which is not an exact duplicate shall be marked and treated as a different exhibit, bearing a different exhibit number.

(4) In addition to exhibit numbers, documents may bear other numbers or letters used by the parties for internal control purposes.

33. INTERROGATORIES TO PARTIES

33-1. Interrogatories.

(a) Form of Answers and Objections. Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a statement of reason for the objection. When objection is made to part of an interrogatory, the remainder of the interrogatory shall be answered at the time the objection is made, or within the period of any extension of time to respond, whichever is later.

(b) Number of Interrogatories. No more interrogatories than permitted under FRCivP 33 may be propounded except pursuant to stipulation or order of the court. Any memorandum in support of a motion for leave to propound additional interrogatories shall set forth the additional proposed interrogatories and the reasons for their use.

(c) Sequential Numbering. Interrogatories shall be numbered sequentially without repeating the numbers used in any prior set of interrogatories propounded by that party.

34. PRODUCTION OF DOCUMENTS AND THINGS

34-1. Response to Request for Production.

A response to a request made pursuant to FRCivP 34(a) shall set forth each request in full before each response or objection. Each objection shall be followed by a statement of the reason for the objection.

36. REQUEST FOR ADMISSION

36-1. Request for Admission and Response.

Requests for admission made pursuant to FRCivP 36(a) shall be numbered sequentially without repeating the numbers used on any prior set of requests propounded by that party. Responses to requests for admission shall set forth each request in full before each response or objection. Each objection shall be followed by a statement of the reason for the objection. An interrogatory which demands that a party set forth the basis for a denial shall be treated as a separate discovery request and shall be allowable only to the extent that a party is eligible to propound further interrogatories.

Commentary

Under FRCivP 36, a party is not required to set forth the basis of a unqualified denial.

37. COMPELLING DISCLOSURE OR DISCOVERY

37-1. Procedures for Resolving Disputes.

(a) Alternative Procedures. FRCivP 37 shall govern formal motions to compel disclosure or discovery. Formal motions shall be noticed and filed in accordance with Civil L.R. 7-2. As an alternative, in lieu of a formal motion, the assigned judge may allow parties to use the informal means for resolving disclosure or discovery disputes set forth in Civil L.R. 37-1(b)-(d).

(b) Conference Between Counsel Required. In all instances, the court will not entertain a request to resolve a disclosure or discovery dispute unless, pursuant to FRCivP 37, counsel have previously conferred for the purpose of attempting to resolve all disputed issues. If counsel for the moving party seeks to arrange such a conference and opposing counsel refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to FRCivP 37(a)(4).

(c) Informal Resolution by Chambers Conference. To the extent a disclosure or discovery dispute is not resolved by a conference between counsel pursuant to Civil L.R. 37-1(b) and counsel for the moving party certifies that in the circumstances of the case an immediate resolution is necessary, counsel may make an *ex parte* request pursuant to Civil L.R. 7-11(c) to schedule and direct that all affected parties attend a conference in chambers in person or by telephone to resolve the dispute. Unless otherwise ordered, the clerk's minute order shall constitute the order of the court.

(d) Resolution by Expedited Motion. To the extent a disclosure or discovery dispute is not resolved by a conference between counsel pursuant to Civil L.R. 37-1(b) or with the judge pursuant to Civil L.R. 37-1(c), at the option of counsel for the moving party or at the direction of the court, counsel may serve and file an expedited motion pursuant to Civil L.R. 7-10.

(e) Motion for Sanctions. When, in connection with a dispute about disclosure or discovery, a party seeks an award of attorney fees or other form of sanction pursuant to FRCivP 37 or Civil L.R. 37-1(c) or (d), the motion must be:

(1) Filed separately;

(2) Scheduled in conformity with Civil L.R. 7-2; and

(3) Include competent declarations which:

(A) Set forth the facts and circumstances that support the motion;

(B) Describe the efforts made by the moving party to secure compliance by the opponent with the rule or obligation that allegedly has been violated, without intervention by the court; and

(C) Specify the sanction sought and, if attorney fees or other costs or expenses are requested, itemize with particularity the otherwise unnecessary expenses, including attorney fees, directly caused by the alleged violation or breach.

40. TRIAL

40-1. Continuance of Trial Date; Sanctions for Failure to Proceed.

Unless otherwise ordered, no continuance of a scheduled trial date will be granted except upon order of the court, for which motion must be made in accordance with the provisions of Civil L.R. 7-2. Failure of a party to proceed with the trial on the scheduled trial date may result in the imposition of appropriate sanctions, including dismissal or entry of default. Jury costs may be assessed as sanctions against a party or the party's attorney for failure to proceed with a scheduled trial or to provide the court with timely written notice of a settlement.

Commentary

Counsel should consult any Standing Orders issued by the assigned judge with respect to the conduct of trial. Such orders are available from the clerk of court.

54. COSTS

54-1. Filing Cost Bill for Taxable Costs.

(a) Time for Filing and Content. No later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs shall serve and file a bill of taxable costs. The cost bill shall state separately and specifically each item of taxable costs claimed. It shall be supported by a certificate of counsel, pursuant to 28 U.S.C. §1924, that the costs are correctly stated, were necessarily incurred, and are allowable by law.

(b) Effect of Service. Service of bill of taxable costs shall constitute notice pursuant to FRCivP 54(d), of a request for taxation of costs by the clerk of the court.

(c) Certificate of Counsel. The certificate of counsel required by 28 U.S.C. § 1924 as well as the bill of costs submitted pursuant to Civil L.R. 54-1(a) shall be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.

Commentary

Costs are taxed in conformity with 28 U.S.C. §§ 1920, 1923 and other applicable statutes. Prior to filing for costs or fees, counsel should consult the courtroom deputy regarding any applicable court directives or practices regarding the award of costs. The 14-day time period set by this rule is inapplicable where the statute authorizing costs establishes a different time deadline, (e.g., 28 U.S.C. § 2412(d)(1)(B) setting 30 days from final judgment as time limit to file for fees under Equal Access to Justice Act).

54-2. Objections to Bill for Taxable Costs.

(a) Time for Filing Objections. Within 10 days after service by any party of its bill for taxable costs, the party against whom costs are claimed shall serve and file any specific objections to any item of cost claimed in the bill, succinctly setting forth the grounds of each objection.

(b) Meet and Confer Requirement. Any objections filed under this Local Rule shall contain a representation that counsel met and conferred in an effort to resolve disagreement about the taxable costs claimed in the bill, or that the objecting party made a good faith effort to arrange such a conference.

54-3. Standards for Taxing Costs.

(a) Fees for Filing and Service of Process.

(1) The clerk's filing fee is allowable if paid by the claimant.

(2) Fees of the marshal as set forth in 28 U.S.C. § 1921 are allowable to the extent actually incurred. Fees for service of process by someone other than the marshal acting pursuant to FRCivP 4(c), are allowable to the extent reasonably required and actually incurred.

(b) Reporters' Transcripts.

(1) The cost of transcripts necessarily obtained for an appeal is allowable.

(2) The cost of a transcript of a statement by a judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.

(3) The cost of other transcripts is not normally allowable unless, before it is incurred, it is approved by a judge or stipulated to be recoverable by counsel.

(c) Depositions.

(1) The cost of an original and one copy of any deposition (including video taped depositions) taken for any purpose in connection with the case is allowable.

(2) The expenses of counsel for attending depositions are not allowable.

(3) The cost of reproducing exhibits to depositions is allowable if the cost of the deposition is allowable.

(4) Notary fees incurred in connection with taking depositions are allowable.

(5) The attendance fee of a reporter when a witness fails to appear is allowable if the claimant made use of available process to compel the attendance of the witness.

(d) Reproduction and Exemplification.

(1) The cost of reproducing and certifying or exemplifying government records used for any purpose in the case is allowable.

(2) The cost of reproducing disclosure or formal discovery documents when used for any purpose in the case is allowable.

(3) The cost of reproducing copies of motions, pleadings, notices, and other routine case papers is not allowable.

(4) The cost of reproducing trial exhibits is allowable to the extent that a judge requires copies to be provided.

(5) The cost of preparing charts, diagrams, videotapes and other visual aids to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the court in understanding the issues at the trial.

(e) Witness Expenses. Per diem, subsistence and mileage payments for witnesses are allowable to the extent reasonably necessary and provided for by 28 U.S.C. § 1821. No other witness expenses, including fees for expert witnesses, are allowable.

(f) Fees for Masters and Receivers. Fees to masters and receivers are allowable.

(g) Costs on Appeal. Such other costs, not heretofore provided for, authorized under Rule 39, Federal Rules of Appellate Procedure, are allowable.

(h) Costs of Bonds and Security. Premiums on undertaking bonds and costs of providing security required by law, by order of a judge, or otherwise necessarily incurred are allowable.

54-4. Determination of Taxable Costs.

No sooner than 10 days after receipt of proof of service of a bill of taxable costs on a party against whom costs are claimed, the clerk shall tax costs after considering any objections filed pursuant to Civil L.R. 54-2. On the bill of costs or in a separate order, the clerk shall indicate which, if any of the claimed costs are allowed and against whom such costs are allowed. The clerk shall serve copies of the notice taxing costs on all parties. Unless a timely motion for review of the allowed costs is filed with the assigned judge, the bill will become final 15 days after the date of the clerk's notice taxing costs. A motion for review is timely if filed within 5 days of service of the clerk's notice taxing costs. The motion for review must conform to the requirements of Civil L.R. 7-2.

54-5. Motion for Attorney's Fees.

(a) Time for Filing Motion. Unless otherwise ordered by the Court after a motion pursuant to Civil L.R. 7-10, 7-11, or 7-12, motions for awards of attorney's fees by the court shall be served and filed within 14 days of entry of judgment by the district court. Filing an appeal from the judgment shall not extend the time for filing a motion. Counsel for the respective parties shall meet and confer for the purpose of resolving all disputed issues relating to attorney's fees before making a motion for award of attorney's fees. *(Amended effective July 1, 1997)*

Commentary

A short time of period of only 14 days from the entry of judgment for filing a motion for attorney's fees is set by FRCivP 54(d)(2)(B). Counsel who desire to seek an order extending the time to file such a motion, either by stipulation (See Civil L.R. 7-12) or by expedited or ex parte motion (See Civil L.R. 7-10, 7-11), are advised to seek such an order as expeditiously as practicable.

(b) Form of Motion. Unless otherwise ordered, the motion for attorney fees shall be supported by declarations or affidavits containing the following information:

(1) A statement that counsel have met and conferred for the purpose of attempting to resolve any disputes with respect to the motion or a statement that no conference was held, with certification that the applying attorney made a good faith effort to arrange such a conference, setting forth the reason the conference was not held; and

(2) A statement of the services rendered by each person for whose services fees are claimed together with a summary of the time spent by each person, and a statement describing the manner in which time records were maintained. Depending on the circumstances, the court may require production of an abstract of or the contemporary time records for inspection, including *in camera* inspection, as the judge deems appropriate; and

(3) A brief description of relevant qualifications and experience and a statement of the customary hourly charges of each such person or of comparable prevailing hourly rates or other indication of value of the services.

56. SUMMARY JUDGMENT

56-1. Time and Content of Motion for Summary Judgment.

Motions for summary judgment or summary adjudication and opposition to such motions shall be noticed as provided in Civil L.R. 7-2 and 7-3. If papers are filed or served without supporting affidavits or in accordance with the time period allowed pursuant to FRCivP 56(c), the court may, *sua sponte* or pursuant to *ex parte* request of a party under Civil L.R. 7-11(c), reschedule the hearing so as to give a moving party time to file affidavits or to give an opposing party the amount of advance notice required under Civil L.R. 7-2.

Commentary

FRCivP 56 allows summary judgment motions to be served 10 days before the hearing with or without supporting affidavits. Opposing affidavits may be served the day prior to the hearing. While the court may not preclude a party from proceeding in accordance with the Federal Rules, it may reschedule the hearing to allow a party an opportunity to respond in the time and manner provided by Civil L.R. 7-2 and 7-3.

56-2. Joint Statement of Undisputed Facts.

In any pending motion for summary judgment or summary adjudication, the assigned judge may order the parties to meet, confer and submit, on or before a date set by the assigned judge, a joint statement of undisputed facts.

56-3. Issues Deemed Established.

Statements contained in an order of the court denying a motion for summary judgment or summary adjudication shall not constitute issues deemed established for purposes of the trial of the case, unless the court so specifies.

58. ENTRY OF JUDGMENT

58-1. Entry of Judgment in Private Securities Actions.

In any private action subject to section 27(c)(1) of the Securities Act, 15 U.S.C. § 77z-1(c)(1), and section 21D(c)(1) of the Securities Exchange Act, 15 U.S.C. § 78u-4(c)(1), the findings required thereunder shall be entered by separate order; until entry of such order, the clerk shall not enter judgment in the action. *(Adopted effective March 25, 1997)*

65. INJUNCTIONS

65-1. Temporary Restraining Orders.

(a) *Ex Parte* Motion Allowed. A motion for a temporary restraining order may be made by *ex parte* motion pursuant to Civil L. R. 7-11.

(b) Documentation Required. An *ex parte* motion for a temporary restraining order shall be accompanied by:

(1) A copy of the complaint;

(2) A separate memorandum of points and authorities in support of the motion;

(3) The proposed temporary restraining order; and

(4) Such other documents in support of the motion which the party wishes the court to consider.

(c) Notice to Opposition of *Ex Parte* Motion. Unless relieved by order of a judge for good cause shown, counsel applying for a temporary restraining order shall give reasonable advance notice of such motion to opposing counsel or party.

(d) Form of Temporary Restraining Order. No temporary restraining order will be issued except with an order to show cause fixing the time for hearing an *ex parte* motion for a preliminary injunction, which shall be scheduled pursuant to FRCivP 65(b). Proposed orders submitted under this Rule shall provide a place for the judge to fix the time within which the restraining order and all supporting pleadings and papers shall be served upon the adverse party of any opposing papers.

65-2. Motion for Preliminary Injunction.

Motions for preliminary injunctions unaccompanied by a temporary restraining order are governed by the provisions of Civil L.R. 7-2.

65.1 SECURITY

65.1-1. Security.

(a) When Required. Upon demand of any party, where authorized by law and for good cause shown, the court may require any party to furnish security for costs which can be awarded against such party in an amount and on such terms as the court deems appropriate.

(b) Qualifications of Surety. Every bond must have as surety either:

(1) A corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9306;

(2) A corporation authorized to act as surety under the laws of the State of California;

(3) Two natural persons, who are residents of the Northern District of California, each of whom separately own real or personal property not exempt from execution within the district. (The total value of these two persons' property should be sufficient to justify the full amount of the suretyship); or

(4) A cash deposit of the required amount, made with the clerk and filed with a bond signed by the principals.

(c) Court Officer as Surety. No clerk, marshal or other employee of the court may be surety on any bond or other undertaking in this court. No member of the bar appearing for a party in any pending action, may be surety on any bond or other undertaking in that action. However, cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies shall be returned to the owner and not to the attorney.

(d) Examination of Surety. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security, or to require the justification of personal sureties.

66. PREJUDGMENT REMEDIES

66-1. Appointment of Receiver.

(a) Time for Motion. A motion for the appointment of a receiver in a case may be made after the complaint has been filed and the summons issued.

(b) Temporary Receiver. A temporary receiver may be appointed with less notice than required by Civil L.R. 7-2 or, in accordance with the requirements and limitations of FRCivP 65(b), without notice to the party sought to be subjected to a receivership or to creditors.

(c) Permanent Receiver. Concurrent with the appointment of a temporary receiver or upon motion noticed in accordance with the requirements of Civil L.R. 7-2, the judge may, upon a proper showing, issue an order to show cause, requiring the parties and the creditors to show cause why a permanent receiver should not be appointed.

(d) Parties to be Notified. Within 7 days of the issuance of the order to show cause, the defendant shall provide to the temporary receiver or, if no temporary receiver has been appointed, to the plaintiff, a list of the defendant's creditors, and their addresses. Not less than 10 days before the hearing on the order to show cause, notice of the hearing shall be mailed to the listed creditors by the temporary receiver, or, if none, by the plaintiff.

(e) Bond. The court may require any appointed receiver to furnish a bond in such amount as the court deems reasonable.

66-2. Employment of Attorneys, Accountants or Investigators.

The receiver shall not employ an attorney, accountant or investigator without a court order. The compensation of all such employees shall be fixed by the court.

66-3. Motion for Fees.

All motions for fees for services rendered in connection with a receivership shall set forth in reasonable detail the nature of the services. The motion shall include as an exhibit an itemized record of time spent and services rendered and shall be heard in open court.

66-4. Deposit of Funds.

A receiver shall deposit all funds received in the institution selected by the court as its designated depository pursuant to 28 U.S.C. § 2041, entitling the account with the name and number of the action. At the end of each month, the receiver shall deliver to the clerk a statement of account and the canceled checks.

66-5. Reports.

Within 30 days of appointment, a permanent receiver shall serve and file with the court a verified report and petition for instructions. The report and petition shall contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, their addresses and the amounts of their claims. The petition shall contain the receiver's recommendation as to the continuance of the receivership and reasons therefor. At the hearing, the judge shall determine whether the receivership shall be continued and, if so, shall fix the time for future reports of the receiver.

66-6. Notice of Hearings.

The receiver shall give all interested parties notice of the time and place of hearings of the following in accordance with Civil L.R. 7-2:

(a) Petitions for instructions;

(b) Petitions for the payment of dividends to creditors;

(c) Petitions for confirmation of sales of property;

(d) Reports of the receiver;

(e) Motions for fees of the receiver or of any attorney, accountant or investigator, the notice to state the services performed and the fee requested; and

(f) Motions for discharge of the receiver.

72. MAGISTRATE JUDGES

72-1. Powers of Magistrate Judge.

Each magistrate judge appointed by the court is authorized to exercise all powers and perform all duties conferred upon magistrate judges by 28 U.S.C. § 636, by the local rules of this court and by any written order of a district judge designating a magistrate judge to perform specific statutorily authorized duties in a particular action.

72-2. Objection to Nondispositive Pretrial Decision.

Unless otherwise ordered by the assigned district judge, no response need be filed and no hearing shall be held concerning an objection to a magistrate judge's order pursuant to FRCivP 72(a) and 28 U.S.C. § 636(b)(1)(A). The district judge may deny the objection by written order at any time, but shall not grant it without the opposing party having an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is made within 15 days of filing the objection, the objection shall be deemed denied. The clerk shall notify parties when an objection has been deemed denied.

72-3. Objection to Dispositive Decision.

(a) Form of Objection and Response. Any objection filed pursuant to FRCivP 72(b) and 28 U.S.C. § 636(b)(1)(B) shall be accompanied by a motion for *de novo* determination, specifically identify the portions of the magistrate judge's findings, recommendation or report to which objection is made and the reasons and authority therefor. To the extent consistent with FRCivP 72(b) and 28 U.S.C. § 636, Civil L.R. 7-2 shall govern presentation and consideration of such motions and objections.

(b) Expedited Motion for Expansion of Record or for Evidentiary Hearing. At the time a party files an objection or response, the party may make a motion for expansion or addition to the record of the proceedings before the magistrate judge or for an evidentiary hearing. Such motions shall be made in accordance with Civil L.R. 7-10.

(c) Ruling on Objection Limited to Record before Magistrate Judge. Except when the court grants a motion for expansion or addition to the record or for an evidentiary hearing, the court's review and determination of objections filed pursuant to Civil L.R. 72-3(a) shall be upon the record of the proceedings before the magistrate judge.

Commentary

Procedures governing review of a pretrial order by a magistrate judge on matters not dispositive of a claim or defense are governed by FRCivP 72(a) and 28 U.S.C. § 636(b)(1)(A). Procedures governing consideration of a magistrate judge's findings, report and recommendations on pretrial matters dispositive of a claim or defense are governed by FRCivP 72(b) and 28 U.S.C. § 636(b)(1)(B) & (C).

75. APPEAL FROM MAGISTRATE JUDGE

75-1. Appeal from Judgment by a Magistrate Judge.

FRCivP 73(d), 74 and 75 govern an appeal from a judgment in a case tried before a magistrate judge by consent. When a party elects to appeal the judgment to a district judge, the appeal shall be heard by the district judge who was assigned to the case upon the initial filing of the action. If no such assignment was made, the appeal shall be assigned to a district judge as a miscellaneous civil proceeding according to the Assignment Plan.

Commentary

Procedures governing appeal from a judgment by a magistrate judge in a trial by consent are governed by FRCivP 73(c) and, if consented to by parties, by FRCivP 73(d). FRCivP 74, 75 and 76 and 28 U.S.C. § 636(c)(4) should be consulted concerning the district judge's review of the magistrate judge's judgment. Appeals to the Court of Appeals under Rule 73(c), are governed by 28 U.S.C. § 636(c)(3) and Rule 4(a), FRAppP.

77. DISTRICT COURT AND CLERK

77-1. Locations and Hours.

(a) Locations.

(1) The office of the clerk of this court which serves the San Francisco Division is located at 450 Golden Gate Avenue, San Francisco, California 94102.

(2) The office of the clerk of this court which served the Oakland Division is located at 1301 Clay Street, Oakland, California 94612.

(3) The office of the clerk of this court which serves the San Jose Division is located at 280 South First Street, San Jose, California 95113.

(b) Hours. The regular hours of the offices of the clerk are from 9:00 a.m. to 4:00 p.m. each day except Saturdays, Sundays, and court holidays.

Commentary

See commentary to Civil L.R. 5-2(e) regarding pilot program to test feasibility of a "drop box" for filing certain papers after hours.

77-2. Orders Grantable by Clerk.

The clerk is authorized to sign and enter orders specifically allowed to be signed by the clerk under the Federal Rules of Civil Procedure and these local rules. In addition, the clerk may sign and enter the following orders without further direction of a judge:

(a) Orders specifically appointing persons to serve process in accordance with FRCivP 4;

(b) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(c) Orders of dismissal on consent, with or without prejudice, except in cases to which FRCivP 23, 23.1, or 66 apply;

(d) Orders establishing a schedule for case management in accordance with Civil L.R. 16;

(e) Orders relating or reassigning cases on behalf of the Assignment Committee.

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See Civil L.R. 4-2 "*Certifying Service of Process;*" ADR L.R. 4-12(d) "*Nonbinding Arbitration; Entry of Judgment on Award.*"

77-3. Photography and Broadcasting.

Unless allowed by a judge or a magistrate judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes, the taking of photographs, broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. The term "environs," as used in this rule, means all floors on which chambers, courtrooms or on which offices of the clerk are located, with the exception of any space specifically designated as a Press Room.

77-4. Official Newspapers.

(a) San Francisco. "The Recorder" and the "San Francisco Daily Journal," newspapers of general circulation published in the City and County of San Francisco, are designated the official newspapers of the court. Unless otherwise provided by order, every notice required to be published shall be published in "The Recorder" or the "San Francisco Daily Journal."

(b) Oakland, San Jose, Eureka. The "Inter-City Express," a newspaper of general circulation published in the City of Oakland, the "San Jose Post-Record," a newspaper of general circulation published in the City of San Jose, and the "Eureka Times and Standard," a newspaper of general circulation published in the City of Eureka, are also designated official newspapers of this court for notices required in proceedings of this court held at those respective places, but publication of any notice pursuant to order of this court does not require publication in the newspapers named in this paragraph unless the order for publication expressly so provides.

77-5. Security of the Court.

The court, or any judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the court and of all persons in attendance.

77-6. Weapons in the Courthouse and Courtroom.

(a) Prohibition on Unauthorized Weapons. Only the United States Marshal, deputy marshals and court security officers are authorized to carry weapons within the confines of the courthouse, courtrooms, secured judicial corridors, and chambers of the court. When the United States Marshal deems it appropriate, upon notice to any affected judge, the Marshal may authorize duly authorized law enforcement officers to carry weapons in the courthouse or courtroom.

(b) Use of Weapons as Evidence. In all cases in which a weapon is to be introduced as evidence, before bringing the weapon into a courtroom, the United States Marshal or Court Security Officer on duty shall be notified. Before a weapon is brought into a courtroom, it shall be inspected by the United States Marshal or Court Security Officer to ensure that it is inoperable, appropriately marked as evidence and the assigned Judge notified

77-7. Court Library.

The court maintains a law library primarily for the use of judges and personnel of the court. In addition, attorneys admitted to practice in this court may use the library where circumstances require for actions or proceedings pending in the court. The library is operated in accordance with such rules and regulations as the court may from time to time adopt.

77-8. Complaints Against Judges.

Pursuant to 28 U.S.C. § 372(c), any person alleging that a judge of this court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court or alleging that a judge is unable to discharge all of the duties of office by reason of mental or physical disability may file with the clerk of the court of Appeals for the Ninth Circuit a written complaint containing a brief statement of the facts constituting such conduct. The clerk of this court shall supply to any person wishing to file such a complaint:

(a) A copy of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability;

(b) A copy of the complaint form required by Rule 2(a), Ninth Circuit Judicial Council Rules for Complaints of Judicial Misconduct to be used for filing such a complaint; and

(c) A pre-addressed envelope to the clerk of the Ninth Circuit Court of Appeals, marked "Complaint of Misconduct and/or Disability" pursuant to Rule 2(h), Rules of Judicial Council of Ninth Circuit Governing Complaints of Misconduct.

79. BOOKS AND RECORDS KEPT BY THE CLERK

79-1. Transcript and Designation of Record on Appeal.

If a party orders a transcript, in accordance with and within the time provided by FRAppP 10(b) and fails to make satisfactory arrangements for payment of such transcript with the court reporter at or before the time of ordering such transcript, the court reporter shall promptly notify the clerk and such party. Within 10 days after receipt of such notice from the court reporter, the party ordering a transcript shall make satisfactory arrangements for payment. The reporters' transcript shall be filed within 30 days of the date such arrangements have been made. Failure to make satisfactory arrangements for payment within the time specified shall be certified by the clerk of the court to the Court of Appeals for the Ninth Circuit as a failure by the party to comply with FRAppP 10(b)(4).

Cross References

Ninth Circuit Rules, CR 10-3.1(d) "Payment for Transcript" and CR 10-3.3 "Payment for Additional Portions of Transcript."

79-2. Exclusions from Record on Appeal.

The clerk will not include in the record on appeal the following items unless their inclusion is specifically requested in writing and supported by a brief statement of the reason therefor:

(a) Summons and returns;

(b) Subpoenas and returns;

(c) Routine procedural motions and orders, such as motions for extensions of or shortening time; and

(d) Routine procedural notices.

79-3. Files; Custody and Withdrawal.

All files of the court shall remain in the custody of the clerk and no record or paper belonging to the files of the court shall be taken from the custody of the clerk without a special order of a judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except in extraordinary circumstances.

79-4. Custody and Disposition of Exhibits and Transcripts.

(a) Custody of Exhibits During Trial or Evidentiary Hearing. Unless the court directs otherwise, each exhibit admitted into evidence during a trial or other evidentiary proceeding shall be held in the custody of the clerk.

(b) Removal of Exhibits Upon Conclusion of Proceeding. At the conclusion of a proceeding in this court, any exhibit placed in the custody of the clerk pursuant to Civil L.R. 79-4(a) must be removed by the party which submitted it into evidence. Unless otherwise permitted by the court, no exhibit may be removed earlier than:

(1) 10 days after expiration of the time for filing a notice of appeal, if no notice of appeal is filed in the proceeding by any party; or

(2) 10 days after a mandate issues from the Court of Appeals, if an appeal was taken by any party to the proceeding.

(c) Disposition of Unclaimed Exhibits. Unless otherwise directed by the court, the clerk may destroy or otherwise dispose of exhibits not reclaimed within 20 days after the time set for removal under this rule.

79-5. Sealed or Confidential Documents.

(a) Applicability. When a statute, a federal or local rule or a court order permits documents or things to be filed under seal, the procedures set forth in this local rule shall apply.

Cross Reference

See ADR L.R. 4-12(c) *"Award and Judgment; Sealing Award."*

(b) Lodging Matter with Request to File Under Seal. A party authorized by statute, rule or court order to file a document under seal shall lodge the document with the clerk in accordance with this rule. The clerk shall file the document under seal or refer the matter to the assigned judge under Civil L.R. 79-5(d).

(c) Format. The lodged document shall be contained in an 81/2 inch by 11 inch sealed envelop or other suitable container. The party shall affix a cover sheet to the envelop or container, which shall:

(1) Set out the information required by Civil L.R. 3-4(a) and (b);

(2) Set forth the name, address and telephone number of the submitting party;

(3) If filed pursuant to court order, state the date and name of the judge ordering the matter filed under seal; if filed pursuant to statute or rule, state the authorizing statute or rule;

(4) Prominently display the notation: "DOCUMENT FILED UNDER SEAL." When permitted by the court order, the notation may also include: "NOT TO APPEAR ON THE PUBLIC DOCKET."

(d) Referral to Judge for Determination. If it appears to the clerk that there is no statute or rule which authorizes sealing a document lodged under Civil L.R. 79-5(b) or if the submitting party has failed to comply with the provisions of Civil L.R. 79-5(c), the clerk shall refer the matter to the assigned judge for determination whether the document shall be filed under seal.

(e) Motion to File Under Seal. Counsel seeking to file a document, or thing under seal which is not authorized by statute or rule to be so filed, may file an *ex parte* motion under Civil L.R. 7-11 and lodge the document or thing with the clerk in a manner which conforms with Civil L.R. 79-5(c). If, pursuant to referral by the clerk or motion of a party, the court orders that a lodged document be filed under seal, the clerk shall file the lodged document under seal. Otherwise, the lodged document shall be returned to the submitting party and the document shall not be placed in the file.

(f) Effect of Seal. Unless otherwise ordered by the court, any document, paper or thing filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action. Sealed material shall be opened or destroyed only upon further order of the court.

Commentary

The clerk's file stamp and other required markings shall be made both on the face of the envelope and on the document contained in the envelope.

83. AMENDMENT OF THE LOCAL RULES

83-1. Method of Amendment.

The local rules of this court may be modified or amended by a majority vote of the active judges of the court in accordance with the procedures set forth in this rule. Any proposed substantive modification or amendment of these local rules shall be submitted for review by a Local Rules Advisory Committee, except that amendments for form, style, grammar or consistency may be made without submission to an Advisory Committee.

83-2. Advisory Committee on Rules.

(a) Appointment. Pursuant to 28 U.S.C. § 2077(b), the Chief Judge shall appoint members to a Local Rules Advisory Committee to serve such terms as the Chief Judge shall designate.

(b) Purpose. The Local Rules Advisory Committee shall elect a chair, who shall convene the committee for purposes of making a report and recommendation to the court with respect to the following matters:

(1) The consistency of the local rules of the court with the United States Constitution, Acts of Congress, the Federal Rules, General Orders of the court and Standing Orders of judges of the court;

(2) Modification of the local rules of the court;

(3) Matters referred by the Chief Judge pursuant to Civil L.R. 83-3;

(4) Means to facilitate understanding of the local rules by the bar and the public.

(c) Action by the Court. Upon receipt of the report of the Local Rules Advisory Committee, the court shall consider the report and take such action as the Court deems appropriate.

(d) Submission of Report to Judicial Council. Pursuant to FRCivP 83, the Chief Judge shall submit any report by the Advisory Committee to the Judicial Council of the Ninth Circuit, together with a report which indicates the court's disposition of the issues addressed in the report.

83-3. Procedure for Public Comment on Local Rules.

(a) Publication. Before becoming effective, any proposed substantive modification of the local rules shall be subject to public comment in accordance with FRCivP 83.

(b) Public Submissions. Any person may submit written suggestions for amendments to the local rules. Such suggestions shall be directed to the Chief Judge, who may refer the matter to the Local Rules Advisory Committee for consideration. Upon such referral, the Local Rules Advisory Committee shall acknowledge receipt of the suggestion to the author and evaluate it in accordance with Civil L.R. 83-2.

Commentary

The 1985 Notes of the Advisory Committee on Rules suggests that in appropriate circumstances, the requirement in FRCivP 83 that proposed rules be subject to notice and public comment can be "accomplished through the mechanism of an 'Advisory Committee' . . ." on Rules for the district.

TABLE OF CONTENTS
ADMIRALTY AND MARITIME LOCAL RULES

Page

ADMIRALTY AND MARITIME LOCAL RULES

1. TITLE AND SCOPE OF RULES

1-1. Title.

These are the Local Rules of Practice in Admiralty and Maritime Claims before the United States District Court for the Northern District of California. They should be cited as "Admir. L.R. ___."

1-2. Scope.

These admiralty local rules apply only to proceedings that are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("FRCivP Supp"): maritime attachment and garnishment; actions *in rem*; possessory, petitory and partition actions; actions for exoneration from or limitation of liability; and statutory condemnation proceedings analogous to maritime actions *in rem*. The Federal Rules of Civil Procedure and the civil local rules of this court are also applicable in these proceedings, except to the extent that the civil local rules are inconsistent with these admiralty local rules.

Cross Reference

See FRCivP Supp A.

2. PLEADING IN ADMIRALTY AND MARITIME PROCEEDINGS

2-1. Verification of Pleadings.

Verification of every pleading, claim to property or other paper as required by FRCivP Supp B, C, and D shall be upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized to so verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

Cross Reference

See 28 U.S.C. § 1746.

2-2. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under FRCivP Supp B or C except a demand for a salvage award shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under FRCivP Supp E(5)(a) may be based upon these allegations.

Cross Reference

See FRCivP Supp B, C, E(5)(a).

2-3. Affidavit that Defendant is not Found within the District.

The affidavit required by FRCivP Supp B(1) to accompany the complaint seeking a money judgment shall describe the efforts made by and on behalf of plaintiff to find and serve the defendant within the district. The phrase "not found within the district" in FRCivP Supp B(1) means that, in an *in personam* action, the defendant is not physically present in this district and cannot be personally served with the summons and complaint.

Cross Reference

FRCivP 4(d).

3. JUDICIAL AUTHORIZATION AND PROCESS

3-1. Review by Judge.

(a) Authorization to Issue Process. Except in forfeiture actions by the United States, before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under FRCivP Supp B and C, the pleadings, the affidavit required by FRCivP Supp B and accompanying supporting papers must be reviewed by a judge, as defined in Civil L.R. 1-5(I). If the judge finds the conditions set forth in FRCivP Supp B or C exist, the judge shall authorize the clerk to issue appropriate process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

(b) Exigent Circumstances. If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

(c) Personal Appearance. Unless otherwise required by the judge, the review by the judge will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) Order. Upon approving the application for arrest, attachment or garnishment, the judge will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment or garnishment. The proposed form of order authorizing the arrest, attachment or garnishment, and the order of arrest, attachment or garnishment shall be submitted with the other documents for review.

(e) Request for Review. Except in case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with FRCivP Supp B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judge to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed, and upon approval, presented to the clerk for issuance of the appropriate order.

3-2. When Assigned Judge Unavailable.

If the judge to whom a case under these admiralty local rules has been assigned is not available, as defined in Civil L.R. 1-5(n), any matter pertaining to arrest, attachment, garnishment, security or release may be presented to any other judge in the district without reassigning the case.

3-3. Return Date.

In an action under FRCivP Supp D, a judge may order that the claim and answer be filed on a date earlier than 20 days after arrest. The order may also set a date for expedited hearing of the action.

3-4. Process Held in Abeyance.

If a party does not wish the process to be issued at the time of filing the action, the party shall request that issuance of process be held in abeyance. It will not be the responsibility of the clerk or the marshal to ensure that process is issued at a later date.

4. ATTACHMENT, GARNISHMENT AND ARREST OF PROPERTY

4-1. Order to Show Cause Regarding Intangible Property.

The summons issued pursuant to FRCivP Supp C(3) shall direct the person having control of intangible property to show cause, no later than 10 days after service, why the intangible property should not be delivered to the court to abide the judgment. Pursuant to *ex parte* motion made under Civil L.R. 7-11, for good cause shown, a judge may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants of the property may show cause as provided in FRCivP Supp C(6) why the property should not be delivered to or retained by the court.

4-2. Notice of Action and Arrest.

(a) Publication. The notice required by FRCivP Supp C(4) shall be published once in a newspaper named in Civil L.R. 77-4, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

(1) The court, title, and number of the action;

(2) The date of the arrest;

(3) The identity of the property arrested;

(4) The name, address, and telephone number of the attorney for plaintiff;

(5) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to FRCivP Supp C(6) must be filed with the clerk and served on the attorney for plaintiff within 10 days after publication;

(6) A statement that an answer to the complaint must be filed and served within twenty days after publication, and that otherwise, default may be entered and condemnation ordered;

(7) A statement that applications for intervention under FRCivP 24 by persons claiming maritime liens or other interests shall be filed within the time fixed by the court; and

(8) The name, address, and telephone number of the marshal.

(b) Filing of Proof of Publication. No later than thirty days after the date of publication, plaintiff shall cause to be filed with the clerk sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

4-3. Service by Marshal--When Required.

Only a marshal shall arrest or attach a vessel or tangible property aboard a vessel. If other tangible or intangible property is the subject of the action, the clerk may deliver the warrant to a marshal, a person or organization contracted with by the United States, a person specially appointed by the court for that purpose, or, if the action is brought by the United States, any officer or employee of the United States.

Cross Reference

See FRCivP Supp C(3).

4-4. Instructions to the Marshal.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal or the person authorized to serve the warrant pursuant to Admir. L.R. 4-3.

4-5. Property in Possession of United States Officer.

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer, employee or custodian to retain custody of the property until ordered to do otherwise by a judge.

4-6. Security Deposit for Arrest or Attachment of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance for at least 10 days. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in FRCivP Supp E.

4-7. Undertakings in Lieu of Arrest.

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with Civil L. R. 65.1-1 and has been approved by a judge or clerk.

4-8. Adversary Hearing.

The adversary hearing following arrest or attachment or garnishment that is called for in FRCivP Supp E(4)(f) shall be conducted upon 3 days written notice to plaintiff, unless otherwise ordered. This local rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

5. DEFENSE; LIMITATION OF LIABILITY

5-1. Deposit of Security for Costs.

The amount of security for costs under FRCivP Supp F(1) shall be $1,000 unless otherwise ordered, and may be combined with the security for value and interest.

5-2. Order of Proof at Trial.

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials.

6. JUDGMENT, DEFAULT AND DEFAULT JUDGMENT

6-1. Default in Action *in Rem*.

(a) Notice Required. A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given:

(1) By publication as required in FRCivP Supp C(4);

(2) By service upon the master or other person having custody of the property; and

(3) By service under FRCivP 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interests.

(1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of Ownership.

(2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.

(3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c) Failure to Give Notice. Failure to give notice as provided by this local rule shall be grounds for setting aside the default under applicable rules but shall not affect title to property sold pursuant to order of sale or judgment.

6-2. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under FRCivP 55(a). Judgment may be entered under FRCivP 55(b) at any time after default has been entered. Default will be entered upon a showing that:

(a) Notice has been given as required by Admir. L.R. 6-1;

(b) The time to answer has expired, and

(c) No one has appeared to claim the property.

6-3. Rate of Prejudgment Interest Allowed.

Unless a judge directs otherwise or as provided by statute, prejudgment interest shall be awarded at the rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.

7. SECURITY

7-1. Security for Costs.

In an action under the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to FRCivP Supp E(2)(b). Unless otherwise ordered, the amount of security shall be $500. The party so ordered shall post the security within five days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

7-2. Appraisal.

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed. The appraiser’s fee is a taxable cost of the action.

8. INTERVENTION

8-1. Intervenor’s Claim.

(a) Presentation of Claim. When a vessel or other property has been arrested, attached or garnished, and is in the hands of the marshal or custodian substituted therefor, anyone having a claim against the vessel or property is required to present the claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judge. The clerk shall promptly deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

9. CUSTODY SALE AND RELEASE OF PROPERTY

9-1. Custody of Property.

(a) Safekeeping of Property. When a vessel, cargo or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

(b) Insurance. The marshal may procure insurance to protect the marshal, deputies, keepers and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo or other property, and in performing whatever services may be undertaken to protect the vessel, cargo or other property, and to maintain the court's custody. The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in custody of the court.

(c) Vessel Operations. Following arrest or attachment of a vessel, no cargo handling, repairs or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his or her liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel or other operations. Before or after the marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judge will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the clerk in the form of a verified claim at any time before the vessel, cargo or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

9-2. Sale of Property.

(a) Notice. Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least 6 days before the date of sale.

(b) Payment of Bid. Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of the full purchase price if it does not exceed $500, and otherwise $500 or ten percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check before confirmation of the sale or within 3 days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than 10 days prior to the date of sale.

(c) Report and Confirmation. At the conclusion of the sale, the marshal shall forthwith file a written report to the court of the fact of sale, the price obtained and the name and address of the buyer. The clerk of the court shall endorse upon such report the time and date of its filing. If within 3 days, exclusive of Saturdays, Sundays and legal holidays, no written objection is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action thereon by the court and the clerk upon request shall so state to the marshal in writing; except that no sale shall stand confirmed until the buyer has complied fully with the terms of his purchase. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of sale shall be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property subsequent to the 3-day period hereinabove specified shall be borne by the purchaser.

(d) Penalty for Late Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these local rules or a different time specified by the court shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

(e) Penalty for Default in Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) Opposition to Sale. A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least 5 days. Pending the court's determination of the opposition, such party shall also advance any further expense at such times and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

10. DESERTING SEAMAN CASES

10-1. Service.

Upon filing a verified petition for return of wages deposited in the registry of the court by a Coast Guard official to whom the duties of shipping commissioner have been delegated pursuant to the provisions of 46 U.S.C. § 11505, a copy of the petition shall be served forthwith on the United States Attorney and a copy mailed to the Attorney General of the United States, after which a sworn return of such service and mailing shall be filed.

10-2. Time to Plead.

The United States has 20 days after receipt of a copy of the petition by the United States Attorney in which to file its responsive pleading and claim.

11. DECEASED SEAMEN

11-1. Receipt of Money, Property or Wages.

When the court receives the money, property or wages of a deceased seaman, pursuant to 46 U.S.C. § 10705-10707, the clerk of the court shall receive any cash or check and perform an inventory of the money property or wages. The next of kin of the deceased seaman may claim the money, property or wages by filing with the clerk a Kinsman's Petition for Wages and Effects of Deceased Seaman.

11-2. Disposition of Unclaimed Money, Property or Wages.

If a claim for the money, property or wages of a deceased seaman has not been substantiated and allowed 6 years after receipt of the money, property or wages, or if, 6 years after its receipt it appears to the court that no claim will have to be satisfied, any property shall be sold; and the money, wages and proceeds from the sale shall be deposited by the clerk in the United States Treasury fund for unclaimed monies.

TABLE OF CONTENTS
LOCAL RULES
FOR
ALTERNATIVE DISPUTE RESOLUTION

Page

LOCAL RULES
FOR
ALTERNATIVE DISPUTE RESOLUTION

1. PURPOSE AND SCOPE OF RULES

1-1. Title.

These are the Local Rules for Alternative Dispute Resolution in the United States District Court for the Northern District of California. They should be referred to as "ADR L.R. ___."

1-2. Purpose and Scope.

(a) Purpose. The court recognizes that full, formal litigation of claims can impose large economic burdens on parties and can delay resolution of disputes for considerable periods. The court also recognizes that sometimes an alternative dispute resolution procedure can improve the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and their satisfaction with the process and result. The court adopts these ADR Local Rules to make available to litigants a broad range of court-sponsored ADR processes to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation without impairing the quality of justice or the right to trial. The court offers diverse ADR services to enable parties to use the ADR process that promises to deliver the greatest benefits to their particular case.

(b) Scope. These ADR Local Rules supplement the civil local rules of the court and, except as otherwise indicated, apply to all civil actions filed in this court. Cases subject to these ADR local rules also remain subject to the other local rules of the court.

(c) Magistrate Judges Consent Cases. In cases in which the parties have consented to jurisdiction by a magistrate judge under 28 U.S.C. § 636(c), the magistrate judge shall have the full scope of powers that these ADR local rules confer on district judges, including the authority to refer cases to ADR programs and to grant relief from the requirements of these ADR local rules.

2. GENERAL PROVISIONS

2-1. ADR Unit.

(a) Staff and Responsibilities. The ADR Unit shall consist of a Director of ADR Programs, ADR Program Counsel, ADR Administrator and such case administrators as the court may authorize. The ADR Director and ADR Program Counsel shall be attorneys with expertise in ADR procedures. The ADR Unit shall be responsible for the design, implementation, administration and evaluation of the court's ADR programs. It also shall be responsible for recruiting, screening and training attorneys to serve as neutrals in the court's ADR programs.

(b) Contacting the ADR Unit. The address and phone numbers of the ADR Unit are:

U.S. District Court-ADR Unit
450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102

Telephone: (415) 522-2199
Telephone for ADR Telephone Conferences only: (415) 522-4603
fax: (415) 522-2146

Commentary

The court encourages litigants and counsel to contact the ADR Unit to discuss the suitability of ADR options for their cases or for assistance in tailoring an ADR procedure to a specific case.

2-2. ADR Magistrate Judge.

The court has appointed United States Magistrate Judge Wayne D. Brazil as the ADR Magistrate Judge. The ADR Magistrate Judge will be responsible for supervising the ADR Unit, consulting with the ADR Director and ADR Program Counsel on issues of policy, assisting with the training of neutrals, ruling on requests to be excused from appearing in person at arbitration, ENE and mediation sessions, and hearing and determining complaints alleging violations of these ADR local rules.

2-3. Referral to ADR Program.

(a) At Filing. As set forth in ADR L.R. 4-2 and 5-2, some cases, identified by objective criteria, shall be referred to an ADR program automatically at the time of the filing of the complaint or the notice of removal. The initial case management schedule issued at filing shall state whether a case has been so referred.

(b) By Stipulation, Motion or Order. Subject to pertinent jurisdictional constraints, a case may be referred to an ADR program by order of the assigned judge following a stipulation by all parties, by motion of a party under Civil L.R. 7, or on the judge's initiative. A stipulation and proposed order selecting an ADR process shall designate the specific ADR process the parties have selected and set forth any other information the parties would like the court to know.

(c) Relief from Automatic Referral. Any party whose case has been referred automatically to an ADR program may file with the assigned judge a motion for relief from automatic referral under Civil L.R. 7. The criteria under which the judge will rule on such motions are specific to each program and are set forth below in ADR L.R. 3-5(c)(3), 4-2(c) and 5-2(b).

2-4. Violation of the ADR Local Rules.

(a) Reporting Violation.

(1) Report by Neutral. An arbitrator, evaluator, or mediator who perceives a material violation of these ADR local rules shall make a written report directly to the ADR Magistrate Judge and provide copies to all counsel. Such reports shall not be filed and shall not be presented to the assigned judge.

(2) Report by Lawyer or Litigant. A lawyer or litigant who wants to bring to the court's attention an alleged material violation of these ADR local rules must do so by letter sent directly to the ADR Magistrate Judge. Such a letter of complaint must be accompanied by a competent declaration, must be sent contemporaneously to all other parties and the neutral (if already identified), shall not be filed and shall not be presented to the assigned judge.

(b) Sanctions for Violation of these Local Rules. If, upon receiving a written allegation that a party or lawyer has violated one of these ADR local rules, the ADR Magistrate Judge determines that the matter warrants further proceedings, the ADR Magistrate Judge shall issue an order to show cause why sanctions should not be imposed. The ADR Magistrate Judge will afford all interested parties an opportunity to be heard before deciding whether to impose monetary sanctions or to recommend that the court impose other sanctions. Any objections to such sanctions shall be made by motion under Civil L.R. 7 before the General Duty Judge, unless the General Duty Judge is the assigned judge, in which case the objections shall be made to the Chief Judge.

2-5. Neutrals.

(a) Panel. The ADR Unit shall maintain a panel of neutrals serving in the court's ADR programs. Neutrals will be selected from time to time by the court from applications submitted by lawyers willing to serve. In a limited number of cases, the ADR Director and ADR Program Counsel may serve as neutrals.

(b) Qualifications and Training. Each lawyer serving as a neutral in a court ADR program shall be a member of the bar of this court or a member of the faculty of an accredited law school and shall successfully complete training as required by the court. Additional minimum requirements for serving on the court's panel of neutrals, which the court may modify in individual circumstances for good cause, are as follows:

(1) Arbitrators. Arbitrators shall have been admitted to the practice of law for at least 10 years and shall have:

(A) For not less than five years, committed 50% or more of their professional time to matters involving litigation; or

(B) Substantial experience serving as a neutral in dispute resolution proceedings.

(2) ENE Evaluators. Evaluators shall have been admitted to the practice of law for at least 15 years and have considerable experience with civil litigation in federal court. Evaluators shall also have substantial expertise in the subject matter of the cases assigned to them and shall have the temperament and training to listen well, facilitate communication across party lines and, if called upon, assist the parties with settlement negotiations.

(3) Mediators. Mediators shall have been admitted to the practice of law for at least 7 years and shall be knowledgeable about civil litigation in federal court. Mediators shall have strong mediation process skills and the temperament and training to listen well, facilitate communication across party lines and assist the parties with settlement negotiations.

(c) Oath. Lawyers serving as neutrals in any of the court's ADR programs shall take the oath or affirmation prescribed in 28 U.S.C. § 453.

(d) Conflicts of Interest. No lawyer may serve as a neutral in a case in a court ADR program in violation of the standards set forth in 28 U.S.C. § 455. If a prospective neutral discovers a circumstance that would not compel disqualification under § 455(b), but that might be covered by § 455 (a), the neutral shall promptly disclose that circumstance to all counsel in writing, as well as the ADR Unit. A party who has an objection to the neutral based upon an allegation that the neutral has a conflict of interest shall present this objection in writing to the ADR Unit within 10 calendar days of learning the source of the potential conflict or shall be deemed to have waived objection.

(e) Immunities. All lawyers serving as neutrals in any of the court's ADR programs are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

2-6. Evaluation of ADR Programs.

Congress has mandated that the court's ADR programs be evaluated. Neutrals, counsel and clients shall promptly respond to any inquiries or questionnaires from persons authorized by the court to evaluate the programs. Responses to such inquiries will be used for research and monitoring purposes only and the sources of specific information will not be disclosed to the assigned judge or in any report.

3. ADR MULTI-OPTION PROGRAM

3-1. Purpose.

The ADR Multi-Option Program is designed to encourage litigants in a broad range of cases to use ADR and to provide parties with sophisticated assistance in identifying the ADR process that is best suited to their particular case.

3-2. Summary Description.

Litigants in certain cases designated when the complaint or notice of removal is filed are presumptively required to participate in one non-binding ADR process offered by the court (Arbitration, Early Neutral Evaluation, Mediation, or Early Settlement Conference with a magistrate judge) or, with the assigned judge's permission, may substitute an ADR process offered by a private provider. Unless they have stipulated to an ADR process, counsel may be required to participate in a joint telephone conference with the court's ADR Director or ADR Program Counsel to consider the suitability of the ADR options for their case. When litigants have not stipulated to an ADR process before the case management conference, the assigned judge will discuss the ADR options with counsel at that conference. If the parties cannot agree on a process before the end of the case management conference, the judge will select one of the ADR processes offered by the court unless persuaded that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources consumed by its use.

Cross Reference
See Civil L.R. 16-14 *"Case Management Conference."*

3-3. Assignment to ADR Multi-Option Program.

(a) Automatic Assignment. Appropriate civil cases may be assigned to the ADR Multi-Option Program by the clerk when the complaint or notice of removal is filed. Notice of such assignment will be given in the initial case management schedule issued to the filing or removing party.

(b) By Stipulation, Motion or Order. Cases not assigned at filing may be assigned to the ADR Multi-Option Program by order of the assigned judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the judge's initiative.

3-4. ADR Options.

(a) Court-Sponsored ADR Programs. The court-sponsored ADR options for cases assigned to the ADR Multi-Option Program include:

(1) Non-binding Arbitration;

(2) Early Neutral Evaluation (ENE);

(3) Mediation; and

(4) Early Settlement Conference with a magistrate judge**.**

(b) Private ADR. A private ADR procedure, to be conducted within the time frames set forth in these ADR local rules, may be substituted for a court program if the parties so stipulate and the assigned judge approves.

3-5. Selecting an ADR Process.

(a) Selection by Prompt Stipulation. In cases assigned to the ADR Multi-Option Program, as soon as feasible after filing or removal, counsel shall confer to attempt to agree on an ADR process. If counsel agree on an ADR process, they shall file, as soon as feasible, a stipulation and proposed order designating which specific ADR process the parties have selected, the deadline for conducting the ADR session, and setting forth any other information the parties would like the court to know. If the parties file a stipulation selecting an ADR procedure before the date set for the ADR telephone conference, as set forth in ADR L.R. 3-5(b)(4), the ADR telephone conference shall not take place.

(b) Selection Through ADR Telephone Conference. In cases assigned to the ADR Multi-Option Program, counsel may be notified by the court that they are required to participate in a joint ADR telephone conference at a time designated by the court. During the telephone conference, the ADR Director or ADR Program Counsel will provide information to help counsel identify the ADR process that is likely to benefit their particular case the most. The following procedures shall apply to the ADR telephone conference:

(1) Participants. Counsel who will be primarily responsible for handling the trial of the matter shall participate in the conference. Clients and their insurance carriers are encouraged to participate as well. Counsel may request an in-person ADR conference at the court in lieu of the telephone conference by calling the ADR Unit.

(2) Placing the Conference Call. Counsel for the first-listed plaintiff in the case caption shall arrange for and place the telephone conference by calling all other counsel and then the ADR telephone conference number, (415) 522-4603, at the appointed time. The court will reserve one-half hour for each such conference call.

(3) Preparation. Before the telephone conference, counsel shall review with their clients both the brochure entitled *Dispute Resolution Procedures in the Northern District of California* and these ADR local rules.

(4) Exemption from ADR Telephone Conference. Counsel shall be exempted from participating in the telephone conference if, before the date of the conference, they file a stipulation and proposed order selecting an ADR process under ADR L.R. 3-5(a) and send a copy to the ADR Unit. If the stipulation is filed fewer than five days before the telephone conference, counsel must call the ADR Unit at least 24 hours in advance of the scheduled conference to request that it be taken off-calendar.

(5) Request to Continue the ADR Telephone Conference. Requests to continue the ADR telephone conference shall be directed to the ADR Unit at (415) 522-2199.

(6) Stipulation Following ADR Telephone Conference. Parties who stipulate to an ADR procedure after the telephone conference may do so on a form provided by the court pursuant to ADR L.R. 3-5(a) or in their case management statement. Counsel shall send a copy of the stipulation to the ADR Unit.

(c) Selection at Case Management Conference.

(1) Consideration of Options. If the parties do not stipulate to an ADR option before the case management conference, the assigned Judge will discuss with the parties the selection of an option at that conference. The ADR Director or ADR Program Counsel may consult with the Judge before the case management conference and may recommend a specific ADR option for the case.

(2) Selection by Stipulation or Order. If the parties agree to a particular ADR option at the case management conference and the assigned judge approves, the judge will issue an order referring the case to that program. If the parties do not agree to an ADR process, and the judge deems it appropriate, he or she will select one of the court ADR programs (non-binding arbitration, subject to statutory jurisdictional constraints; ENE; mediation; or an early settlement conference with a magistrate judge) and issue an order referring the case to that program.

(3) Exemption. If the parties persuade the judge at the case management conference that no ADR process is likely to deliver benefits to the parties sufficient to justify the resources consumed by its use, the judge will exempt the case from participating in an ADR process.

3-6. Timing of ADR Process in the ADR Multi-Option Program.

Unless otherwise ordered, a non-binding arbitration shall be conducted within 135 days after the initial case management conference or issuance of the initial case management order, whichever occurs first. An ENE session, mediation or an early settlement conference with a magistrate judge shall be conducted within 90 days after the initial case management conference or issuance of the initial case management order, whichever occurs first.

4. NON-BINDING ARBITRATION

4-1. Description.

Arbitration under this local rule is essentially an adjudicative process in which an arbitrator or a panel of three arbitrators issues a non-binding judgment ("award") on the merits after an expedited, adversarial hearing. Either party may reject the non-binding award and request a trial *de novo*. An arbitration occurs earlier in the life of a case than a trial and is less formal and less expensive. Because testimony is taken under oath and is subject to cross-examination, arbitration can be especially useful in cases that turn on credibility of witnesses.

4-2. Automatic Referral to Arbitration.

(a) Eligible Cases. Pursuant to 28 U.S.C. § 651, any of the following civil actions seeking only money damages in an amount not exceeding $150,000, exclusive of punitive damages, interest, costs and attorney fees, and which are not assigned to the ADR Multi-Option Program, may be referred automatically by the clerk to the arbitration program at filing:

> **(1) When United States is Not a Party.** Actions in which the United States is not a party which are founded on diversity of citizenship (28 U.S.C. § 1332), federal question (28 U.S.C. § 1331), admiralty or maritime jurisdiction (28 U.S.C. § 1333), and which arise under a contract or written instrument but do not allege violations of civil rights, or which arise out of personal injury or property damage.
>
> **(2) When United States is a Party.** Actions in which the United States is a party which arise under the Federal Tort Claims Act (28 U.S.C. § 2671, et seq.); the Longshoremen's and Harbor Workers Act (33 U.S.C. § 901, et seq.); the Miller Act (40 U.S.C. § 270b), when the United States has no monetary interest in the claim; or the Suits in Admiralty Act (46 U.S.C. § 741, et seq., § 781 et seq.) which involve no general average.

(b) Determination of Monetary Claim.

(1) Separate Certification. In all cases otherwise subject to arbitration under this rule, the court shall presume the damages claim to be for less than $150,000, exclusive of punitive damages, interest, costs and attorney fees, unless counsel asserting the claim files a separate certification that the damages reasonably recoverable exceed $150,000, exclusive of punitive damages, interest, costs and attorney fees. Any such certification must be filed by plaintiff within 30 days after the case was filed in this court or by defendant at the time of filing a counterclaim or cross-claim.

(2) Determination. Notwithstanding the amount of damages alleged in a party's pleading or certification under ADR L.R. 4-2(b)(1), the assigned judge may, acting *sua sponte* or in response to a motion under Civil L.R. 7, and after affording the parties an opportunity to be heard, require arbitration if satisfied that recoverable damages cannot reasonably exceed $150,000, exclusive of punitive damages, interest, costs and attorney fees.

(c) Relief from Automatic Referral. The assigned judge may, *sua sponte* or on motion by any party under Civil L.R. 7 brought within 20 days after the filing of the last responsive pleading, exempt any case from arbitration if the objectives of arbitration would not be realized because:

(1) The case involves complex or novel legal issues;

(2) Legal issues predominate over factual issues; or

(3) For other good cause shown.

4-3. Referral by Stipulation or Order of the Court.

(a) By Order of the Assigned Judge. A case that was not referred to arbitration at filing, but otherwise meets the criteria for automatic referral to arbitration as set forth in ADR L.R. 4-2, may be referred to arbitration by order of the assigned judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the judge's initiative.

(b) By Stipulation. A case that does not meet the criteria for automatic referral to arbitration at filing as set forth in ADR L.R. 4-2 may be referred to arbitration by order of the assigned judge only upon the written consent of all parties. Consent must be given freely and knowingly and no party or attorney in any such case may be prejudiced for refusing to consent to participate in arbitration. If consent is not given by all parties, no judge to whom the case might be assigned shall be advised of the identity of any party or attorney who elected not to consent to arbitration.

4-4. Arbitrators.

(a) Selection. After entry of an order referring the case to arbitration, and upon ascertaining the identity of counsel for the parties to the action, the clerk shall promptly furnish to each party a list of ten arbitrators randomly selected from the court's panel. The parties shall then confer in the following manner to select a single arbitrator or, if all parties so request in writing, a panel of three arbitrators:

(1) Striking Names. Each side shall be entitled to strike two names from the list, plaintiff(s) to strike the first name, defendant(s) the next, then plaintiff(s) and then defendant(s).

(2) Ranking Names. The parties shall then select the arbitrator or panel from the remaining six names by alternately selecting one name; defendant(s) to make the first choice, plaintiff(s) the next, and continuing in this fashion.

(3) Submitting List. Within ten days of receipt of the original list of ten names, the parties shall list the six names in the order selected and submit them to the clerk. If the parties fail to submit such a list within the prescribed time, the clerk shall select an arbitrator at random from the original list of ten names.

(4) Notification by Clerk. The clerk shall promptly notify the person or persons whose names appear as the parties' first choice or choices of their selection, or, if the parties have not chosen, the person(s) the clerk has selected. If any person so selected is unable or unwilling to serve, the clerk shall notify the person whose name appears next on the list. If the clerk is unable to select an arbitrator or constitute a panel of arbitrators from the six selections, the process of selection under this Rule shall be repeated. When the requisite number of arbitrators has agreed to serve, the clerk shall promptly send written notice of the selections to the arbitrator(s) and to the parties. The rules governing conflicts of interest and the procedure for objecting to an arbitrator are set forth in ADR L.R. 2-5(d). When a panel of three arbitrators is selected, the clerk shall designate the person to serve as the panel's presiding arbitrator.

(b) Compensation. Arbitrators shall be paid by the court $250 per day or portion of each day of hearing in which they serve as a single arbitrator or $150 for each day or portion of each day in which they serve as a member of a panel of three.

(c) Payment and Reimbursement. When filing an award, arbitrators shall submit a voucher on the form prescribed by the clerk for payment of compensation and for reimbursement of any transportation expenses necessarily incurred in the performance of duties under this Rule. No reimbursement will be made for any other expenses.

4-5. Timing and Scheduling the Hearing.

(a) Hearing Date. The clerk shall set a date for hearing not less than 20 nor more than 120 days after the clerk has been informed of the parties' ranking in accordance with ADR L.R. 4-4(a)(3) (or of the clerk's random selection in accordance with ADR L.R. 4-4(a)(4)). This date shall not be continued or vacated except for extreme and unanticipated emergencies as established in writing and approved by the assigned Judge. If the case is resolved before the hearing date, or if due to an emergency a participant cannot attend the arbitration, counsel shall notify the arbitrator and the ADR Unit immediately upon learning of such settlement or emergency.

(b) Postponement Due to Motion. Unless all parties stipulate in writing or the assigned Judge orders otherwise for good cause shown, no arbitration hearing may commence until 30 days after disposition by the court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, provided such motion was filed and served within 30 days after the filing of the last responsive pleading.

(c) Place and Time. The hearing may be held at any location within the Northern District of California selected by the arbitrator(s), including a room at a federal courthouse, if available. In selecting the location, the arbitrator(s) shall consider the convenience of the parties and witnesses. Unless the parties agree otherwise, the hearing shall be held during normal business hours.

4-6. Discovery.

Notwithstanding the provisions of Civil L.R. 16-3 or the Federal Rules, in cases assigned to arbitration, parties may serve requests for discovery within 30 days after service of the complaint or notice of removal. All discovery shall be concluded no fewer than 20 days before the arbitration and may not be reopened after the arbitration except on order of the assigned judge for good cause shown.

4-7. *Ex Parte* Contact Prohibited.

Except with respect to scheduling matters, there shall be no *ex parte* communications between parties or counsel and an arbitrator.

4-8. Written Arbitration Statements.

(a) Time for Submission. No later than 10 calendar days before the arbitration session, each party shall submit directly to the arbitrator(s), and shall serve on all other parties, a written arbitration statement.

(b) Prohibition against Filing. The statements shall not be filed and the assigned judge shall not have access to them.

(c) Content of Statement. The statements shall be concise and shall:

(1) Summarize the claims and defenses;

(2) Identify the significant contested factual and legal issues, citing authority on the questions of law;

(3) Identify proposed witnesses; and

(4) Identify, by name and title or status, the person(s) with decision-making authority, who, in addition to counsel, will attend the arbitration as representative(s) of the party.

(d) Modification of Requirement by Arbitrator(s). After jointly consulting counsel for all parties, the arbitrator(s) may modify or dispense with the requirements for the written arbitration statements.

4-9. Optional Telephone Conference Before Arbitration.

The arbitrator(s) may schedule a brief joint telephone conference with counsel before the arbitration to discuss matters such as the procedures to be followed, whether supplemental written material should be submitted, which witnesses will attend, how testimony will be presented, including expert testimony, and whether and how the arbitration will be recorded.

4-10. Attendance at Arbitration.

(a) Attendance of Party and Counsel. Each party and its lead trial counsel shall attend the arbitration hearing unless excused under paragraph (b), below. This requirement reflects the court's view that principal values of arbitration include affording litigants an opportunity to articulate their positions and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the merits of the case.

(1) Corporation or Other Entity. A party other than a natural person (*e.g.*, a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who is knowledgeable about the facts of the case.

(2) Government Entity. A party that is a government or governmental agency, in addition to counsel, shall send a representative knowledgeable about the facts of the case and the governmental unit's position. If the action is brought by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the arbitration session by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Request to be Excused. A party may be excused from attending an arbitration in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A party seeking to be excused must submit, no fewer than 15 days before the date set for the arbitration, a letter to the ADR Magistrate Judge, copying other counsel and the arbitrator(s). The letter shall:

(1) Set forth with specificity all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request; and

(4) Be accompanied by a proposed order.

(d) Participation by Telephone. A party excused from attending an arbitration in person shall be available to participate by telephone.

4-11. Authority of Arbitrators and Procedures at Arbitration.

(a) Authority of Arbitrators. Subject to the provisions of these ADR local rules, arbitrators shall be authorized to:

(1) Administer oaths and affirmations;

(2) Make reasonable rulings as are necessary for the fair and efficient conduct of the hearing; and

(3) Make awards.

(b) Presumption against Bifurcation. Except in extraordinary circumstances, the arbitrator(s) shall not bifurcate the arbitration.

(c) Quorum. Where a panel of three arbitrators has been named, any two members of a panel shall constitute a quorum, but the concurrence of a majority of the entire panel shall be required for any action or decision by the panel, unless the parties stipulate otherwise.

(d) Testimony.

(1) Subpoenas. Attendance of witnesses and production of documents may be compelled in accordance with FRCivP 45.

(2) Oath and cross-examination. All testimony shall be taken under oath or affirmation and shall be subject to such reasonable cross-examination as the circumstances warrant.

(3) Evidence. In receiving evidence, the arbitrator(s) shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence which the arbitrator(s) consider(s) relevant and trustworthy and which is not privileged.

(e) Transcript or Recording. A party may cause a transcript or recording of the proceedings to be made but shall provide a copy to any other party who requests it and who agrees to pay the reasonable costs of having a copy made.

(f) Default of Party. The unexcused absence of a party shall not be a ground for continuance, but damages shall be awarded against an absent party only upon presentation of proof thereof satisfactory to the arbitrator(s).

4-12. Award and Judgment.

(a) Form of Award. An award shall be made after an arbitration under this Rule. Such an award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money, if any, awarded. It shall be in writing and (unless the parties stipulate otherwise) be signed by the arbitrator or by at least two members of a panel. No arbitrator shall participate in the award without having attended the hearing. Costs within the meaning of FRCivP 54 and Civil L.R. 54-3 may be assessed by the arbitrator(s) as part of an arbitration award.

(b) Filing and Serving the Award. Within 10 days after the arbitration hearing is concluded, the arbitrator(s) shall file the award with the clerk in an unsealed envelope with a cover sheet stating: "Arbitration Award to be filed under seal pursuant to ADR L.R. 4-12--not to be forwarded to the Assigned Judge." The cover sheet also shall list the case caption, case number and name(s) of the arbitrator, but shall not specify the content of the award. The clerk shall promptly serve copies of the arbitration award on the parties. In addition, immediately after receiving a copy of the arbitration award, the party that prevailed in the arbitration shall serve a copy of the award on the other parties and shall promptly file proof of said service under Civil L.R. 5-4, but shall not attach a copy of the award.

(c) Sealing of Award. Each filed arbitration award shall promptly be sealed by the clerk. The award shall not be disclosed to any judge who might be assigned to the case until the court has entered final judgment in the action or the action has been otherwise terminated, except as necessary to assess costs or prepare the report required by Section 903(b) of the Judicial Improvements and Access to Justice Act.

(d) Entry of Judgment on Award. If no party has filed a demand for trial *de novo* (or a notice of appeal, which shall be treated as a demand for trial *de novo*) within 30 days of notice of the filing of the arbitration award, the clerk shall enter judgment on the arbitration award in accordance with FRCivP 58. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

4-13. Trial *De Novo*.

(a) Time for Demand. If any party files and serves a demand for trial *de novo* within 30 days of notice of the filing of the arbitration award, no judgment thereon shall be entered by the clerk and the action shall proceed in the normal manner before the assigned judge. Failure to file and serve a demand for trial *de novo* within this 30-day period waives the right to trial *de novo*.

(b) Limitation on Admission of Evidence. At the trial *de novo* the court shall not admit any evidence indicating that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless:

(1) The evidence would otherwise be admissible in the trial under the Federal Rules of Evidence, or

(2) The parties have otherwise stipulated.

4-14. Stipulation to Binding Arbitration

At any time before the arbitration hearing, the parties may stipulate in writing to waive their rights to request a trial *de novo* pursuant to ADR L.R. 4-13. Such stipulation shall be submitted to the assigned judge for approval and shall be filed. In the event of such stipulation, judgment shall be entered on the arbitration award pursuant to ADR L.R. 4-12(d).

4-15. Federal Arbitration Act Presumptively Inapplicable.

The Federal Arbitration Act (9 U.S.C. §§ 1, *et seq.*) has no application to any arbitration conducted under this rule, at least absent a written agreement between all parties that is entered before the arbitration and that effectively invokes the jurisdiction of that statute.

5. EARLY NEUTRAL EVALUATION

5-1. Description.

In Early Neutral Evaluation (ENE) the parties and their counsel, in a confidential session, present summaries of their cases and receive a non-binding evaluation by an experienced neutral lawyer with subject matter expertise. The evaluator also helps identify areas of agreement, provides case-planning guidance and, if requested by the parties, settlement assistance.

5-2. Automatic Referral to ENE.

(a) Eligible Cases. Civil cases that fall within the Nature of Suit categories set forth in subsection (1), below, that are not excepted under subsection (2), and that are neither assigned to the ADR Multi-Option Program nor referred to arbitration, may be referred to the ENE program by the clerk at filing, subject to the availability of qualified evaluators and the court's administrative resources:

(1) Nature of Suit. Suits designated on the Civil Cover Sheet as: CONTRACT: Insurance (110), Miller Act (130), Negotiable Instrument (140), Stockholders' Suits (160), Other Contract (190), and Contract Product Liability (195); TORTS: Motor Vehicle (350), Motor Vehicle Product Liability (355), Other Personal Injury (360), Personal Injury-Product Liability (365), and Other Fraud (370); CIVIL RIGHTS: Employment (442); PROPERTY RIGHTS: Copyrights (820), Patent (830), and Trademark (840); and OTHER STATUTES: Antitrust (410), Racketeer Influenced and Corrupt Organizations (470), and Securities/Commodities /Exchange (850).

(2) Excepting Criteria. Class actions, cases not designated on the Civil Cover Sheet as Copyrights (820), Patent (830), and Trademark (840) in which the principal relief sought is injunctive, or in which one or more of the parties is proceeding *in pro per*, shall not be referred automatically to the ENE program. Cases in which a declaratory judgment is sought may be referred automatically to the program except when the only parties to the action are insurance carriers, sureties, or bonding companies.

(b) Relief from Automatic Referral. A party who believes that some extraordinary circumstance makes it unfair to have its case go through the ENE process may file with the assigned judge a motion for relief from referral, but must do so within 10 calendar days of receiving notice that the case has been designated for the program. Such motions shall be made in accordance with Civil L.R. 7, shall set forth in detail the considerations supporting the motion, and shall indicate realistically the amount in controversy in the case. Copies shall be sent to all other parties, the ADR Unit, and the evaluator, if appointed.

5-3. Referral by Stipulation, Motion or Order.

Subject to the availability of administrative resources and of an evaluator with subject matter expertise, appropriate civil cases that were not referred to ENE at filing may be referred to ENE by order of the assigned judge following a stipulation by all parties, on motion by a party under Civil L.R. 7, or on the judge's initiative.

5-4. Evaluators.

(a) Assignment. After entry of an order referring a case to ENE, and upon ascertaining the identity of counsel for the parties to the action, the ADR Unit will appoint from the court's panel an evaluator who has expertise in the subject matter of the lawsuit, is available during the appropriate period and has no apparent conflict of interest. The court will notify the parties of the appointment. The rules governing conflicts of interest and the procedure for objecting to an evaluator on that basis are set forth in ADR L.R. 2-5(d).

(b) Compensation. ENE evaluators shall volunteer their preparation time and the first four hours in an ENE session. After four hours in an ENE session, the evaluator may either (1) continue to volunteer his or her time or (2) give the parties the option of concluding the procedure or paying the evaluator for additional time at an hourly rate of $150. The ENE procedure will continue only if all parties and the evaluator agree. After eight hours in one or more ENE sessions, if all parties agree, the evaluator may charge his or her hourly rate or such other rate that all parties agree to pay.

(c) Payment. All terms and conditions of payment must be clearly communicated to the parties. The parties may agree to pay the fee in other than equal portions. The parties shall pay the evaluator directly. On a form provided by the court, the evaluator shall promptly report to the ADR Unit the amount of any payment received.

5-5. Timing and Scheduling the ENE Session.

(a) Scheduling by Evaluator. Promptly after being appointed to a case, the evaluator shall arrange for the pre-session phone conference under ADR L.R. 5-8 and shall fix the date and place of the ENE session within the deadlines set by this rule or the order referring the case to ENE.

(b) Deadline for Conducting Session. Unless otherwise ordered by the assigned judge for good cause shown, the ENE session shall be held within the following deadlines:

(1) Cases Referred to ENE When Filed. In cases referred to ENE when filed, the ENE session shall be held within 150 days of the filing of the complaint or notice of removal or within 60 days of the clerk's issuance of a notice appointing the evaluator.

(2) Cases in ADR Multi-Option Program. In cases referred to ENE through the ADR Multi-Option program, the ENE session shall be conducted within 90 days after the initial case management conference or the issuance of the initial case management order, whichever occurs first.

(3) Cases Neither Referred When Filed Nor in the ADR Multi-Option Program. In cases not in the ADR Multi-Option Program that are referred to ENE sometime after filing, the court shall fix the time frame for the ENE session.

5-6. Requests to Extend Deadline.

(a) Motion Required. Requests for extension of the deadline for conducting an ENE session shall be made no later than 15 days before the session is to be held and shall be directed to the assigned judge, in a motion under Civil L.R. 7-10, with a copy to the other parties, the evaluator (if appointed) and the ADR Unit.

(b) Content of Motion. Such motion shall:

(1) Detail the considerations that support the request;

(2) Indicate whether the other parties concur in or object to the request; and

(3) Be accompanied by a proposed order setting forth a new deadline by which the ENE session shall be held.

5-7. *Ex Parte* Contact Prohibited.

Except with respect to scheduling matters, there shall be no *ex parte* communications between parties or counsel and the evaluator until after the evaluator has committed his or her evaluation to a writing and all parties have agreed that *ex parte* communications with the evaluator may occur.

5-8. Telephone Conference Before ENE Session.

The evaluator shall schedule a brief joint telephone conference with counsel before the ENE session to discuss matters such as the scheduling of the ENE session, the procedures to be followed, the nature of the case, and which client representatives will attend.

5-9. Written ENE Statements.

(a) Time for Submission. No later than 10 calendar days before the first ENE session, each party shall submit directly to the evaluator, and shall serve on all other parties, a written ENE Statement.

(b) Prohibition Against Filing. The statements shall not be filed and the assigned judge shall not have access to them.

(c) Content of Statement. The statements shall be concise, may include any information that may be useful to the evaluator, and shall:

(1) Identify, by name and title or status:

(A) The person(s) with decision-making authority, who, in addition to counsel, will attend the ENE session as representative(s) of the party, and

(B) Persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the ENE session or the prospects for settlement;

(2) Describe briefly the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;

(3) Address whether there are legal or factual issues whose early resolution would reduce significantly the scope of the dispute or contribute to settlement negotiations;

(4) Identify the discovery that is necessary to equip the parties for meaningful settlement negotiations;

(5) Describe the history and status of any settlement negotiations; and

(6) Include copies of documents out of which the suit arose (*e.g.*, contracts), or whose availability would materially advance the purposes of the evaluation session, *(e.g.*, medical reports or documents by which special damages might be determined).

5-10. Special Provisions for Patent, Copyright, or Trademark Cases.

(a) Patent Cases. A party who bases a claim on a patent shall attach to its written statement an element-by-element analysis of the relationship between the applicable claims in the patent and the allegedly infringing product. Also the party shall describe in its written statement its theory or theories of damages and shall set forth all available information that supports each theory. A party who asserts a defense against the patent based on "prior art" shall attach an exhibit that identifies each known example of alleged prior art and that describes the relationship between each such example of prior art and the claims of the patent. In addition, if such party denies infringement, it shall describe the basis for such denial.

(b) Copyright Cases. A party who bases a claim on copyright shall include as exhibits the copyright registration and exemplars of both the copyrighted work and the allegedly infringing work, and shall make a systematic comparison showing points of similarity. Such party shall also present whatever direct or indirect evidence it has of copying, and shall indicate whether it intends to elect statutory or actual damages. Each party in a copyright case who is accused of infringing shall set forth in its written statement the dollar volume of sales of and profits from the allegedly infringing works that it and any entities for which it is legally responsible have made.

(c) Trademark Cases. A party who bases a claim on trademark or trade dress infringement, or on other unfair competition, shall include as an exhibit its registration, if any, exemplars of both its use of its mark and use of the allegedly infringing mark, both including a description or representation of the goods or services on or in connection with which the marks are used, and any evidence it has of actual confusion. If "secondary meaning" is in issue, such a party shall also describe the nature and extent of the advertising it has done with its mark and the volume of goods it has sold under its mark. Both parties shall describe in their evaluation statements how the consuming public is exposed to their respective marks and goods or services, including, if available, photographic or other demonstrative evidence. Each party in a trademark or unfair competition case who is accused of infringement shall set forth the dollar volume of sales of and profits from goods or services bearing the allegedly infringing mark.

5-11. Attendance at Session.

(a) Parties. The parties themselves and their counsel are required to attend the ENE session unless excused under paragraph (c), below. This requirement reflects the court's view that the principal values of ENE include affording litigants opportunities to articulate directly to other parties and a neutral their positions and interests and to hear, first hand, both their opponent's version of the matters in dispute and a neutral assessment of the merits of the case and the relative strengths of each party's legal positions.

(1) Corporation or Other Entity. A party other than a natural person (*e.g.*, a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(2) Government Entity. A party that is a government or governmental agency, in addition to counsel, shall send a representative knowledgeable about the facts of the case and the governmental unit's position, and who has, to the greatest extent feasible, authority to settle. If the action is brought by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the ENE session by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Request to be Excused. A party may be excused from attending an ENE session in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A party seeking to be excused must submit, no fewer than 15 days before the date set for the session, a letter to the ADR Magistrate Judge, providing copies to other counsel and to the evaluator. The letter shall:

(1) Set forth all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request, and

(4) Be accompanied by a proposed order.

(d) Participation by Telephone. A party excused from appearing in person at an ENE session shall be available to participate by telephone.

5-12. Procedure at ENE Session.

(a) Components of ENE Session.

The evaluator shall:

(1) Permit each party (through counsel or otherwise), orally and through documents or other media, to present its claims or defenses and to describe the principle evidence on which they are based;

(2) Help the parties identify areas of agreement and, where feasible, enter stipulations;

(3) Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain carefully the reasoning that supports these assessments;

(4) If the parties are interested, help them, through private caucusing or otherwise, explore the possibility of settling the case;

(5) Estimate, where feasible, the likelihood of liability and the dollar range of damages;

(6) Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to enter meaningful settlement discussions or to position the case for disposition by other means;

(7) Help the parties assess litigation costs realistically; and

(8) Determine whether some form of follow up to the session would contribute to the case development process or to settlement.

(b) Process Rules. The session shall be informal. Rules of evidence shall not apply and there shall be no formal examination or cross-examination of witnesses.

(c) Evaluation and Settlement Discussions. If all parties stipulate, they may proceed to discuss settlement after the evaluation has been written but before it is presented. The evaluation shall be presented on demand by any party.

5-13. Confidentiality.

(a) Confidential Treatment. This court, the evaluator, all counsel and parties, and any other persons attending the ENE session shall treat as confidential all written and oral communications made in connection with or during any ENE session. The court hereby extends to all such communications all the protection afforded by FREvid 408 and by FRCivP 68. In addition, unless otherwise stipulated by all parties and the evaluator, the court hereby prohibits disclosure of any written or oral communication made by any party, counsel, evaluator or other participant in connection with or during any ENE session to anyone not involved in the litigation. Nor may such communication, absent stipulation by all parties and the evaluator, be disclosed to the assigned judge or used for any purpose, including impeachment, in any pending or future proceeding in this court. This rule does not preclude a report to or an inquiry by the ADR Magistrate Judge pursuant to ADR L.R. 2-4(a) regarding a possible violation of the ADR Local Rules. Nor does this rule prohibit the evaluator from discussing the ENE session with the court's ADR staff who shall maintain the confidentiality of the ENE session.

(b) Confidentiality Agreement. The ENE evaluator may ask the parties and all persons attending the ENE session to sign a confidentiality agreement on a form provided by the court.

(c) Stipulation. Communications made in connection with or during an ENE proceeding may be disclosed only if all parties and the evaluator so agree. Nothing in this section shall be construed to prohibit parties from entering written agreements resolving some or all of the case or entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with an ENE session.

5-14. Follow Up.

(a) Discussion at Close of ENE. At the close of the ENE session, the evaluator and the parties shall discuss whether it would be beneficial to schedule any follow up to the session.

(b) Follow Up the Evaluator May Order. The evaluator may order these kinds of follow up without stipulation:

(1) Responses to settlement offers or demands;

(2) A focused telephone conference;

(3) Exchanges of letters between counsel addressing specified legal or factual issues; or

(4) Written or telephonic reports to the evaluator, *e.g.*, describing how discovery or other events occurring after the ENE session have affected a party's analysis of the case or position with respect to settlement.

(c) Stipulation to Follow Up Session. With the consent of all parties, the evaluator may schedule one or more follow up ENE sessions that may include additional evaluation, settlement discussions, or case development planning.

(d) Limitations on Authority of Evaluator. Evaluators have no authority to compel parties to conduct or respond to discovery or to file motions. Nor do evaluators have authority to determine what the issues in any case are, to impose limits on parties' pretrial activities, or to impose sanctions.

5-15. Certification of Session.

Within 10 days of the close of each ENE session, and on the form Certification of Session provided by the court, the evaluator shall report to the ADR Unit: the date of the session, whether any follow up is scheduled, whether the case settled in whole or in part, and any stipulations the parties agree may be disclosed. The ADR Unit will file the certification.

6. MEDIATION

6-1. Description.

Mediation is a flexible, non-binding, confidential process in which a neutral lawyer-mediator facilitates settlement negotiations. The mediator improves communication across party lines, helps parties articulate their interests and understand those of their opponent, probes the strengths and weaknesses of each party's legal positions, identifies areas of agreement and helps generate options for a mutually agreeable resolution to the dispute. The mediator generally does not give an overall evaluation of the case. A hallmark of mediation is its capacity to expand traditional settlement discussion and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

6-2. Eligible Cases.

Subject to the availability of administrative resources and of a suitable mediator, appropriate civil cases may be referred to mediation by order of the assigned judge following a stipulation by all parties, on motion by a party under Civil L.R. 7-10, or on the judge's initiative.

6-3. Mediators.

(a) Assignment. After entry of an order referring a case to mediation, the ADR Unit will appoint from the court's panel a mediator who is available during the appropriate period and has no apparent conflict of interest. The court will notify the parties of the appointment. The rules governing conflicts of interest and the procedure for objecting to a mediator on that basis are set forth in ADR L.R. 2-5(d).

(b) Compensation. Mediators shall volunteer their preparation time and the first four hours in a mediation. After four hours of mediation, the mediator may either (1) continue to volunteer his or her time or (2) give the parties the option of concluding the procedure or paying the mediator for additional time at an hourly rate of $150. The procedure will continue only if all parties and the mediator agree. After eight hours in one or more mediation sessions, if all parties agree, the mediator may charge his or her hourly rate or such other rate that all parties agree to pay.

(c) Payment. All terms and conditions of payment must be clearly communicated to the parties. The parties may agree to pay the fee in other than equal portions. The parties shall pay the mediator directly. The mediator shall promptly report to the ADR Unit, on a form provided by the court, the amount of any payment received.

6-4. Timing and Scheduling the Mediation.

(a) Scheduling by Mediator. Promptly after being appointed to a case, the mediator shall arrange for the pre-mediation conference under ADR L.R. 6-6 and shall fix the date and place of the mediation within the deadlines set by paragraph (b), below, or the order referring the case to mediation.

(b) Deadline for Conducting Mediation. Unless otherwise ordered, the mediation shall be held within 90 days after the initial Case Management Conference or issuance of the initial case management order, whichever occurs first.

6-5. Request To Extend the Deadline.

(a) Motion Required. Requests for extension of the deadline for conducting a mediation shall be made no later than 15 days before the session is to be held and shall be directed to the assigned judge, in a motion under Civil L.R. 7-10, with a copy to the other parties, the mediator (if appointed) and the ADR Unit.

(b) Content of Motion. Such motion shall:

(1) Detail the considerations that support the request;

(2) Indicate whether the other parties concur in or object to the request; and

(3) Be accompanied by a proposed order setting forth a new deadline by which the mediation shall be held.

6-6. Telephone Conference Before Mediation.

The mediator shall schedule a brief joint telephone conference with counsel before the mediation session to discuss matters such as the scheduling of the mediation, the procedures to be followed, the nature of the case, and which client representatives will attend.

6-7. Written Mediation Statements.

(a) Time for Submission. No later than 10 calendar days before the first mediation session, each party shall submit directly to the mediator, and shall serve on all other parties, a written Mediation Statement.

(b) Prohibition Against Filing. The statements shall not be filed and the assigned Judge shall not have access to them.

(c) Content of Statement. The statements shall:

(1) Identify, by name and title or status:

(A) The person(s) with decision-making authority, who, in addition to counsel, will attend the mediation as representative(s) of the party, and

(B) Persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the mediation or the prospects for settlement;

(2) Describe briefly the substance of the suit, addressing the party's views of the key liability issues and damages and discussing the key evidence;

(3) Identify the discovery or motions that promise to contribute most to equipping the parties for meaningful settlement negotiations;

(4) Describe the history and current status of any settlement negotiations and provide any other information about any interests or considerations not described elsewhere in the statement that might be pertinent to settlement; and

(5) Include copies of documents likely to make the mediation more productive or to materially advance settlement prospects.

6-8. Contact with Mediator Before the Mediation.

Before the mediation, the mediator may ask each party to submit only to the mediator an additional confidential written statement or may discuss the case in confidence with a lawyer during a telephone conversation. The mediator shall not disclose any party's confidential communication without permission.

6-9. Attendance at Session.

(a) Parties. The parties themselves and their counsel are required to attend the mediation unless excused under paragraph (c), below. This requirement reflects the court's view that principal values of mediation include affording litigants opportunities to articulate directly to the other parties and a neutral their positions and interests and to hear, first hand, their opponent's version of the matters in dispute. Mediation also enables parties to search directly with their opponents for mutually agreeable solutions.

> **(1) Corporation or Other Entity.** A party other than a natural person (*e.g.*, a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.
>
> **(2) Government Entities.** A party that is a government or governmental agency, in addition to counsel, shall send a representative knowledgeable about the facts of the case and the governmental unit's position, and who has, to the greatest extent feasible, authority to settle. If the action is brought by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the mediation by the lawyer who will be primarily responsible for handling the trial of the matter.

(c) Request to be Excused. A party may be excused from attending a mediation session in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A party seeking to be excused must submit, no fewer than 15 days before the date set for the mediation, a letter to the ADR Magistrate Judge, providing copies to all counsel and the mediator. The letter shall:

(1) Set forth all considerations that support the request;

(2) State realistically the amount in controversy in the case;

(3) Indicate whether the other party or parties join in or object to the request, and

(4) Be accompanied by a proposed order.

(d) Participation by Telephone. A party excused from appearing in person at a mediation shall be available to participate by telephone.

6-10. Procedure at Mediation.

(a) Procedure. The mediation shall be informal. Mediators shall have discretion to structure the mediation so as to maximize prospects for settling all or part of the case.

(b) Separate Caucuses. The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the clients only. The mediator may not disclose communications made during such a caucus to another party or counsel without the consent of the party who made the communication.

6-11. Confidentiality.

(a) Confidential Treatment. This court, the mediator, all counsel and parties, and any other persons attending the mediation shall treat as confidential all written and oral communications made in connection with or during any mediation session. The court hereby extends to all such communications all the protection afforded by FREvid 408 and by FRCivP 68. In addition, unless otherwise stipulated by all parties and the mediator, the court hereby prohibits disclosure of any written or oral communication made by any party, counsel, mediator or other participant in connection with or during any mediation to anyone not involved in the litigation. Nor may such communication, absent stipulation by all parties and the mediator, be disclosed to the assigned judge or used for any purpose, including impeachment, in any pending or future proceeding in this court. This rule does not preclude a report to or an inquiry by the ADR Magistrate Judge pursuant to ADR L.R. 2-4(a) regarding a possible violation of the ADR Local Rules. Nor does this rule prohibit the mediator from discussing the mediation session with the court's ADR staff who shall maintain the confidentiality of the mediation.

(b) Confidentiality Agreement. The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the court.

(c) Stipulation. Communications made in connection with or during a mediation may be disclosed only if all parties and the mediator so agree. Nothing in this section shall be construed to prohibit parties from entering written agreements resolving some or all of the case or entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with a mediation.

6-12. Follow Up.

At the close of the mediation session, the mediator and the parties shall jointly determine whether it would be appropriate to schedule a follow up session. Such follow up could include, but need not be limited to, written or telephonic reports that the parties might make to one another or to the mediator, exchange of specified kinds of information, or another mediation session.

6-13. Certification of Session.

Within 10 days of the close of each mediation session and on the form Certification of Session provided by the court, the mediator shall report to the ADR Unit: the date the session was held, whether the case settled in whole or in part, whether any follow up is scheduled, and any stipulations the parties agree may be disclosed. The ADR Unit will file the certification.

7. SETTLEMENT CONFERENCES

7-1. Description.

In a settlement conference, a judicial officer, usually a magistrate judge, facilitates the parties' efforts to negotiate a settlement. Some settlement judges also use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. A settlement judge might articulate views about the merits of the case or the relative strengths and weaknesses of the parties' legal positions.

7-2. Referral to a Settlement Conference.

The court may refer a case to a settlement conference on its own initiative, on the request of a party, or upon stipulation of the parties. A settlement conference generally will be conducted by a magistrate judge, but in some limited circumstances may be conducted by a district judge. Upon written stipulation of all parties, the assigned judge, in the exercise of his or her discretion, may conduct a settlement conference.

7-3. Request of a Party.

At any time after an action has been commenced, pursuant to Civil L.R. 7-11(c), any party may file with the assigned judge, a request for a settlement conference. The parties may stipulate to a preference for one or more particular magistrate judges or district judges. The court will attempt to honor the preference, subject to intra-division needs and the availability of the magistrate judges and district judges.

7-4. Directives from the Settlement Judge.

Within any constraints fixed by the referring judge, the settlement judge shall notify the parties of the time and date of the settlement conference. The settlement judge shall also notify the parties of his or her requirements for pre-conference submissions and for attendance at the settlement conference. The settlement judge may order parties to attend. Unless the settlement judge otherwise specifies, "parties" are defined as follows:

> **(a) Corporation or Other Entity.** A party other than a natural person (*e.g.*, a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

(b) Government Entities. A party that is a government or governmental agency, in addition to counsel, shall send a representative knowledgeable about the facts of the case and the governmental unit's position, and who has, to the greatest extent feasible, authority to settle. If the action is brought by the government on behalf of one or more individuals, at least one such individual also shall attend.

7-5. Prohibition on Communication between the Settlement Judge and the Assigned Judge.

Except as is necessary to preserve the court's capacity to enforce lawful orders or discipline contumacious conduct, or unless all parties otherwise stipulate, the settlement judge may not disclose to the assigned judge any communications that occurred during the settlement conference, the settlement judge's views of the merits of the case, or any party's position with respect to settlement.

8. OTHER ADR PROCESSES

8-1. Other Court ADR Processes.

(a) Non-binding Summary Bench or Jury Trial. A summary bench or jury trial is a flexible, non-binding process designed to promote settlement in complex, trial-ready cases headed for protracted trials. The process provides litigants and their counsel with an advisory verdict after a short hearing in which the evidence may be presented in condensed form, usually by counsel and sometimes through witnesses. This procedure, as ordinarily structured, provides the litigants an opportunity to ask questions and hear the reactions of the judge or jury. The judge's or jury's nonbinding verdict and reactions to the legal and factual arguments are used as bases for subsequent settlement negotiations. Parties considering a non-binding summary trial are encouraged to contact the ADR Unit for assistance in structuring a summary trial tailored to their case.

(b) Special Masters. The court may appoint special masters to serve a wide variety of functions, including, but not limited to: discovery manager, factfinder or host of settlement negotiations. Generally the parties pay the master's fees.

8-2. Private ADR.

There are numerous private sector providers of ADR services including arbitration, mediation, fact-finding, neutral evaluation and private judging. Private providers may be lawyers, law professors, retired judges or other professionals with expertise in dispute resolution techniques. Virtually all private sector providers charge fees for their services.

TABLE OF CONTENTS
***HABEAS CORPUS* LOCAL RULES**

Page

2254. *HABEAS CORPUS* LOCAL RULES

2254-1. Title.

These are the Local Rules of Practice which govern petitions for writs of *habeas corpus* in non-capital cases filed in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 2254. They should be cited as "Habeas L.R. ___."

2254-2. Scope.

These rules are intended to supplement the "Rules Governing Section 2254 Cases in the United States District Courts." The Civil Local Rules of this court are also applicable in these proceedings, except to the extent that they are inconsistent with these *Habeas Corpus* Local Rules. The application of these rules to a particular petition may be modified by the judge to whom the petition is assigned.

2254-3. Filing Petition.

(a) Venue. The following petitions for writs of *habeas corpus* pursuant to 28 U.S.C. § 2254 shall be filed in this district:

> **(1)** Petitions challenging the lawfulness of a conviction or sentence for which the petitioner was convicted and sentenced in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma; or
>
> **(2)** Petitions challenging the manner in which the sentence is being executed, such as loss of good time credits, where the petitioner is confined in an institution located in a county listed in Habeas L.R. 2254-3(a)(1) at the time the petition is filed.

(b) Transfer of Venue. If a petition is filed in this district which does not conform to Habeas L.R. 2254-3(a), venue shall be transferred to:

> **(1)** the district of conviction or sentencing if the petition is challenging the conviction or sentence; or
>
> **(2)** the district of confinement if the petition is challenging the manner in which the sentence is being executed.

(c) Place for Filing. Petitions as to which venue lies in this district shall be filed in San Francisco.

(d) Form and Content. Petitions shall be filed on a form supplied by the clerk of the court, and shall be filled in by printing or typewriting. In the alternative, the petition may be in a legible typewritten or written form which contains all of the information required by the court's form.

(e) *Pro Se* Petitions. Petitions filed by persons who are appearing *pro se* shall be on a form established for that purpose by the court and shall be completed in conformity with the instructions approved by the court. Copies of the forms, instructions and pertinent provisions of these *Habeas Corpus* Local Rules shall be supplied to *pro se* petitioners by the clerk upon request or upon the filing of papers which appear to be a request by a person appearing *pro se* for relief which should be presented by a petition for *habeas corpus* pursuant to 28 U.S.C. § 2254.

(f) Requests to Proceed *In forma Pauperis*. Persons seeking leave to proceed *in forma pauperis* must complete the application and affidavit established for that purpose by the court. Copies of the application form, instructions and pertinent provisions of the local rules shall be supplied to *in forma pauperis* applicants by the clerk upon request or upon the filing of papers which appear to be a request by a person to proceed *in forma pauperis*. The clerk shall refer a completed application to the assigned judge for determination.

(g) Number of Copies. An original and three copies of the petition shall be filed by a petitioner represented by counsel. A *pro se* petitioner need only file the original.

2254-4. Assignment to Judges.

(a) Assignment to District Judge. The assignment of *habeas corpus* petitions to a judge shall be made in accordance with the provisions of the Assignment Plan of the court.

(b) Assignment to Magistrate Judge. Pursuant to 28 U.S.C. § 636(b)(1)(B), a magistrate judge may be designated by the court to perform all duties under these rules.

2254-5. Reserved. [This section is reserved for revised rules regarding *habeas corpus* petitions in capital cases. Until revised rules are implemented, Local Rule 296 remains in effect.]

Habeas L.R. 2254-6

2254-6. Discovery.

No discovery pursuant to FRCivP 26-37 shall be conducted with respect to a petition for writ of *habeas corpus* without leave of the court.

2254-7. Briefing Schedule.

(a) Schedule. Unless the judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the schedule and procedure set forth in this Rule shall apply, subject to modification by the assigned judge. Requests for enlargement of any time period in this rule shall comply with the applicable Civil Local Rules for enlargement of time.

Cross Reference
See Civil L.R. 7-8 *"Enlargement or Shortening of Time."*

(b) Answer to Petition. Within 60 days of service of the petition, respondent shall serve and file:

(1) An answer to the petition with accompanying points and authorities;

(2) The matters defined in Rule 5 of the Rules Governing § 2254 Cases;

(3) Portions of the trial and appellate record that are relevant to a determination of the issues presented by the petition which have not been previously filed; and

(4) Certificate of service, pursuant to Civil L.R. 5-4.

(c) Traverse. Within 30 days after respondent has filed the answer, petitioner may serve and file a traverse.

2254-8. Evidentiary Hearing.

(a) Request for Evidentiary Hearing. A request for an evidentiary hearing by either party shall be made within 15 days from the filing of the traverse, or within 15 days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence the party proposes to offer. An opposition to the request for an evidentiary hearing shall be made within 15 days from the filing of the request. The court will then give due consideration to whether an evidentiary hearing will be held.

(b) Transcript of Evidentiary Hearing. If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

2254-9. Oral Argument.

(a) Request for Oral Argument. A request for an oral argument by either party shall be made within 15 days from the filing of the traverse, or within 15 days from the expiration of the time for filing the traverse or, if an evidentiary hearing is granted, within 15 days after a decision of the court with respect to the subject matter of the evidentiary hearing. The request shall include a specification of the issues to be addressed at the argument.

(b) Notice of Hearing. Upon request of a party, the court, in its discretion, may set the matter down for oral argument. Within 30 days after an evidentiary hearing or within 30 days after the court has denied a request for an evidentiary hearing, the assigned judge shall notify the parties whether the court will hear oral argument and the date of the hearing or whether the matter shall be submitted for decision without oral argument.

2254-10. Rulings.

The court's rulings shall be in the form of a written opinion which will be filed. The clerk shall serve the parties with a copy of the ruling pursuant to FRCivP 77(d) and shall enter on the docket the name and address of each party served, and the date and manner of service.

2254-11. Appeal.

Notice of an appeal taken by a party from a decision of this court with respect to a petition shall be filed with this court in accordance with the provisions of FRAppP 4. Upon the filing of a notice of appeal, the clerk of the court will transmit the record of the case to the Court of Appeals in accordance with the provisions of FRAppP 11.

TABLE OF CONTENTS
BANKRUPTCY LOCAL RULES

BANKRUPTCY LOCAL RULES
for the
NORTHERN DISTRICT OF CALIFORNIA

TITLE AND APPLICABILITY OF RULES

1001-1. Scope of Rules; Short Title; Construction.

(a) Scope of Rules. The Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms promulgated under 28 U.S.C. § 2075, together with these bankruptcy local rules govern practice and procedure in all bankruptcy cases and adversary proceedings in this district. These rules supersede all previous local bankruptcy rules for the United States District Court for the Northern District of California.

(b) Relationship to District Court Rules. These bankruptcy local rules are promulgated with other local rules of the district and should be cited as "B.L.R. _-_."

(c) Relationship to Federal Rules of Bankruptcy Procedure. These rules are divided into nine parts to be consistent in format with the Federal Rules of Bankruptcy Procedure. These rules supplement the Federal Rules of Bankruptcy Procedure and they shall be construed so as to be consistent with those rules and to promote the just, efficient and economical determination of every bankruptcy case and proceeding. Where there is a substantive relationship between a bankruptcy local rule and a particular Federal Rule of Bankruptcy Procedure a corresponding rule number is utilized and a reference to the Federal Rule of Bankruptcy Procedure is included at the end of the bankruptcy local rule.

(d) Relationship to Federal Rules of Civil Procedure. Whenever a Federal Rule of Civil Procedure is incorporated, it shall be incorporated as modified by the Federal Rules of Bankruptcy Procedure.

(e) Amendment. Civil local rules incorporated herein shall be the rules in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules or by such amendment.

1001-2. Applicability of Rules.

(a) Incorporation of Rules from Other Chapters. Except as hereinafter set forth or otherwise ordered by the court, the following civil local rules shall apply in all bankruptcy cases and adversary proceedings:

(1) 1-3 *Effective Date;*

(2) 1-5(c) *Day*;

(3) 1-5(d) *File;*

(4) 1-5(e) *FRCivP.;*

(5) 1-5(i) *General Orders;*

(6) 1-5(j) *General Duty Judge;*

(7) 1-5(k) *Lodge;*

(8) 1-5(l) *Judge;*

(9) 1-5(m) *Standing Orders of Individual Judges;*

(10) 1-5(n) *Unavailability;*

(11) 3-4 *Papers Presented For Filing*, (except for the second sentence of subparagraph (c)(3))*;*

(12) 3-5(a) *Jurisdictional Statement;*

(13) 3-6 *Jury Demand;*

(14) 3-8 *Claim of Unconstitutionality;*

(15) 3-9(a) *Natural Persons Appearing Pro Se;* (c) *Government and Governmental Agency;*

(16) 3-11 *Failure to Notify of Address Changes;*

(17) 5-1 *Filing with the Court;*

(18) 5-4 *Certificate of Service;*

(19) 5-5 *Facsimile Filings* (except for the references to Civil L.R.'s 3-3(a) and 5-2(a));

(20) 7-6 *Oral Testimony Concerning Motion;*

(21) 7-12 *Stipulation;*

(22) 7-13 *Notice Regarding Submitted Matters;*

(23) 10-1 *Amended Pleadings;*

(24) 10-2 *Filing by Clerk;*

(25) 11-1 *The Bar of this Court;*

(26) 11-2 *Practice in this Court;*

(27) 11-3(a)&(b) *Standards of Professional Conduct.* (The first two sentences of Civil L.R. 11-3(b), *Prohibition Against Bias,* shall apply. Any violation of the policy expressed therein should be brought to the attention of the clerk or any judge for referral to the advisory committee referred to in the rule.)

(28) 11-4 *Bar Admission Fees;*

(29) 11-5 *Withdrawal from Case;*

(30) 11-6 *Suspension or Disbarment;*

(31) 11-7 *Disciplinary Power of the Court over Attorneys;*

(32) 11-8(a) *Sanctions for Unauthorized Practice;*

(33) 11-8(b) *Motion for Sanctions* (except for the reference to Civil L.R. 7-2 and except, further, that references to FRCivP 11 shall be replaced with references to Fed. R. Bankr. P. 9011);

(34) 11-9 *Prohibition Against Gratuities;*

(35) 11-10 *Peer Counseling Panel;*

(36) 11-11 *Student Practice;*

(37) 26-2(a) *Discovery Materials;*

(38) 26-3 *Custodian of Discovery Documents;*

(39) 26-4 *Use of Discovery Material for Motion or Trial;*

(40) 26-6 *Discovery Cut-Off;*

(41) 30-1 *Number of Depositions;*

(42) 30-2 *Consultation Regarding Scheduling;*

(43) 30-3 *Numbering of Deposition Pages and Exhibits;*

(44) 33-1 *Interrogatories;*

(45) 34-1 *Response to Request for Production;*

(46) 36-1 *Requests for Admission and Responses;*

(47) 37-1 *Procedures for Resolving Disputes,* (except for references to Civil L.R. 7-2 in (a), Civil L.R. 7-11(c) in (c), Civil L.R. 7-10 in (d), and Civil L.R. 7-2 in (e)(2))*;*

(48) 40-1 *Continuance of Trial Date; Sanctions for Failure to Proceed* (except for the reference to Civil L.R. 7-2)*;*

(49) 54-1 through 54-4 *Matters Regarding Costs;*

(50) 54-5 *Motion for Attorney's Fees* (except for references to Civil L.R.'s 7-10 and 7-11);

(51) 56-2 *Joint Statement of Undisputed Facts;*

(52) 56-3 *Issues Deemed Established;*

(53) 65-1 *Temporary Restraining Orders;*

(54) 65.1-1 *Security;*

(55) 77-3 *Photography and Broadcasting, first sentence only;*

(56) 77-4 *Official Newspapers;*

(57) 77-5 *Security of the Court;*

(58) 77-6 *Weapons in the Courthouse and Courtroom.*

(59) 77-8 *Complaints Against Judges;*

(60) 79-3 *Files; Custody and Withdrawal;*

(61) 79-4 *Custody and Disposition of Exhibits and Transcripts;*

(62) 79-5 *Sealed or Confidential Documents;*

(63) 83-1 *Method of Amendment. Civil L.R. 83-1 shall apply such that amendments for form, style, grammar, consistency or other nonsubstantive modifications may be made to the bankruptcy local rules by a majority vote of the active bankruptcy judges of the court;*

(b) Modification. Any judge may, in any case or adversary proceeding, direct that additional local rules from other Chapters apply. (*Amended effective July 1, 1997*)

PART I.
INTRADISTRICT VENUE; COMMENCEMENT OF CASES; FILING OF PETITIONS AND PLEADINGS

1001-3. Designation of Bankruptcy Divisions.

The United States Bankruptcy Court for the Northern District of California consists of the following divisions:

(a) Santa Rosa. Division 1 shall consist of the counties of Del Norte, Mendocino, Humboldt, Napa, Sonoma, Marin and Lake. The division office is located at the United States Courthouse, 99 South "E" Street, Santa Rosa, California 95404.

(b) San Francisco. Division 3 shall consist of the counties of San Francisco and San Mateo. The division office is located at 235 Pine Street, 19th Floor, San Francisco, California 94104 (mailing address: P. O. Box 7341, San Francisco, California 94120).

(c) Oakland. Division 4 shall consist of the counties of Alameda and Contra Costa. The division office is located at 1300 Clay Street, Room 300, Oakland, California 94612 (mailing address: P. O. Box 2070, Oakland, California 94604).

(d) San Jose. Division 5 shall consist of the counties of Santa Clara, Santa Cruz, Monterey and San Benito. The division office is located at the United States Courthouse, 280 South First Street, Room 3035, San Jose, California 95113.

1002-1. Filing of Petition and Other Pleadings.

(a) Intradistrict Venue. All petitions shall initially be filed with the clerk of the bankruptcy court in the division of proper intradistrict venue as determined by the debtor's street address. The clerk shall bring to the attention of the court any case where the debtor's street address in the petition is a post office box.

(b) Where Papers Filed. Except as provided in B.L.R. 1002-1(d), all papers, in bankruptcy cases not withdrawn to the district court, shall be filed with the clerk in the division where the case is pending.

(c) Change of Intradistrict Venue. If the petitioner believes that venue should be in a division other than the division indicated by the debtor's street address, along with the petition, the petitioner may file an *ex parte* application for transfer of the case to another division. The clerk shall promptly present the application to any available judge of the division where the petition is filed.

(d) Emergency Filings. In the event of a bona fide emergency a petition may be presented for filing in a division other than that indicated by the debtor's street address. The clerk shall accept the petition and any other pleadings presented with the petition on behalf of the proper division, shall obtain the proper division's case number, shall place that number on the petition and other pleadings and shall promptly transmit the petition and other pleadings to the proper division.

1002-2. Number of Copies.

(a) Initial Documents. The petition, statements, schedules, and lists required by Federal Rules of Bankruptcy Procedure 1002, 1003, and 1007 shall be filed in the following numbers:

(1) Chapter 7 - an original and 4 copies.

(2) Chapter 9 - an original and 6 copies (7 copies if a corporation).

(3) Chapter 11 - an original and 6 copies (7 copies if a corporation).

(4) Chapter 12 - an original and 4 copies.

(5) Chapter 13 - an original and 4 copies.

(b) All Other Papers. All pleadings and other papers shall be filed in an original and two copies.

1005-1. Caption and Title of Papers Filed.

In addition to the information generally required by these rules, the caption of each paper filed in a bankruptcy case or adversary proceeding shall contain all of the following information:

(a) The file number of the bankruptcy case in which the proceeding arises and, where applicable, the adversary proceeding, lien avoidance, or relief from stay number;

(b) The chapter of the Bankruptcy Code under which the case is currently pending; and

(c) The date, time, and location of the hearing or trial, where applicable.

1007-1. Use of Practice Forms.

The court may approve and require the use of pre-printed practice forms. The court may also approve practice forms which are not pre-printed but the format of which is required to be followed. Practice forms may be adopted on a district-wide or division-wide basis. Required forms will be available in the clerk's office and, with respect to Chapter 13 practice, also in the office of the Chapter 13 Trustee.

1015-1. Related Cases.

(a) Defined. Related cases are cases where assignment to a single judge would promote efficient administration of the estates or avoid conflicting or inconsistent rulings. Related cases may include: husband and wife; a partnership and one or more of its general partners; two or more general partners; two or more debtors having an interest in the same asset; or a debtor and an affiliate.

(b) Notice of Related Cases. In the event there are related bankruptcy cases, the debtor shall file a Notice of Related Case(s) at the time of filing of a petition for relief, and shall serve a copy of the notice upon the United States Trustee. The notice shall list the name, filing date, and case number of any related cases.

(c) Simultaneous Filing. Related cases which are filed together or on the same date will be assigned by the clerk to the bankruptcy judge presiding in the earliest filed case.

(d) Separate Filing. Any related cases filed on subsequent dates will be assigned by the clerk according to the standards in effect in the division on the date of the subsequent filing.

(e) Transfer. The court may, on its own motion or upon the motion of a party in interest, order a case transferred to another bankruptcy judge based on the court's determination as to whether a case is related and whether the transfer will promote the efficient administration of the estates or avoid inconsistent or conflicting rulings.

(f) Procedure. A motion by a party in interest to transfer a case or cases shall be addressed to the judge presiding in the earliest filed case and served on the debtors and all trustees appointed in the cases.

Cross Reference

See Fed. R. Bankr. P. 1015.

PART II.
ADMINISTRATION; PROFESSIONAL FEES

2001-1. Mail Redirection.

(a) Consent of Debtor. The filing of a petition under Title 11 by a debtor engaged in business is deemed to be the debtor's consent to mail redirection by the interim trustee and the trustee.

(b) Objection by Debtor. If the debtor does not consent to mail redirection, the debtor shall file a written objection with the clerk. Upon the filing of the debtor's objection, the court shall promptly set a hearing on notice to the debtor, trustee and United States Trustee. After the filing of the objection, and pending order of court, the redirection shall continue, but the trustee shall hold, and not open, the debtor's mail.

2015-1. Funds of the Estate.

(a) Account Identification. The signature card (or if there is none, the depository agreement) for any account containing funds which are the property of a bankruptcy estate must clearly indicate that the depositor or investor is a "debtor-in-possession" or a trustee in bankruptcy. This rule does not apply to accounts maintained by Chapter 13 debtors.

(b) Compliance with 11 U.S.C. § 345. There shall be a rebuttable presumption that funds which are deposited with an entity which is included on the United States Trustee's most recent list of "cooperating depositories" have been deposited in accordance with 11 U.S.C. § 345(b).

2015-2. Monthly Operating Reports.

(a) Cases in Which Reports Are Required. Monthly operating and tax reports ("monthly reports") are required from a trustee or debtor-in-possession in the following cases:

(1) All cases under Chapter 11 until confirmation of a plan, and Chapter 12;

(2) Chapter 7 cases where a business is being operated by a trustee;

(3) Chapter 13 business cases, if the court so orders, upon application by the trustee or any party in interest.

(b) Filing Deadline. A monthly report shall be filed by the trustee or debtor-in-possession or a Chapter 13 debtor filing in accordance with this rule no later than the 20th day of the month following the month to which the report pertains. A separate report must be filed for each calendar month, or portion thereof, during which the case is pending and is a case for which a report is required pursuant to B.L.R. 2015-2(a), up to and including the month in which an order of confirmation, conversion, or dismissal is entered.

(c) Service of Reports. A copy of each monthly report shall be served, no later than the day upon which it is filed with the court, upon the United States Trustee, the chairperson and counsel of record (if any) of each committee of creditors and each committee of equity security holders appointed by the United States Trustee, and such other persons or entities as may be ordered by the court. In a Chapter 12 or Chapter 13 case, service of a copy of each monthly report also must be made on the trustee.

(d) Form and Content of Reports. Monthly reports shall be prepared on forms and supporting schedules approved by the judges of the court, copies of which shall be available in the clerk's office.

(e) Modification of Reporting Requirements. The court may, on application and for cause, modify the provisions of this rule. Any application to modify shall be served upon all parties upon whom the monthly report is required to be served.

Cross Reference

See Fed. R. Bankr. P. 2015.

2015-3. Debtor's Books and Records.

(a) Voluntary Cases. In a case filed pursuant to 11 U.S.C. § 301 or § 302, the books and records of the debtor shall be closed on the day immediately preceding the day on which the petition is filed, whether or not a separate estate is created for tax purposes. Pre-petition liabilities shall be segregated and reported separately from post-petition liabilities.

(b) Involuntary Cases. In a case filed pursuant to 11 U.S.C. § 303, the books and records of the debtor shall be closed on the day on which relief is ordered or an interim trustee is appointed, whichever occurs first. Notwithstanding the foregoing, liabilities incurred before the commencement of the case shall be segregated and, in the event relief is granted, reported separately from liabilities incurred after the commencement of the case.

PART III.
CLAIMS; DISCLOSURE STATEMENTS AND PLANS

3003-1. Filing Proof of Claim or Interest Under Chapters 9 and 11.

Unless otherwise ordered by the court, proofs of claim or interest shall be filed pursuant to Fed. R. Bankr. P. 3003 and shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to 11 U.S.C. § 341(a).

3007-1. Objections to Claim.

Where a factual dispute is involved, the initial hearing on an objection shall be deemed a status conference at which the court will not receive evidence. Where the objection involves only a matter of law, the matter may be argued at the initial hearing. Any notice of hearing on a claim objection shall so state.

Cross Reference

See Fed. R. Bankr. P. 3007.

3015-1. Chapter 12 and 13 Plans.

(a) Chapter 12 Plans.

(1) Hearing on Plan and Objections Thereto. Unless otherwise ordered, notice of the hearing on confirmation of the plan shall be served by mail not less than 32 days prior to the hearing. Objections to confirmation of the plan shall be filed and served on the debtor, the United States Trustee, the Chapter 12 trustee, and on any other entity designated by the court, not less than 7 days before the hearing.

(2) Confirmation of Plan. The order of confirmation shall be similar to the Official Form for confirmation of plans in Chapter 11 cases, with appropriate changes made for Chapter 12.

(b) Chapter 13 Plans.

(1) Notice by Trustee. At least 25 days before the first date set for the 11 U.S.C. § 341 meeting of creditors, copies or an adequate summary of the Chapter 13 plan shall be mailed by the trustee to all creditors. The trustee shall certify to the court that service has been made in accordance with this rule and pursuant to Fed. R. Bankr. P. 2002(b). If the plan is not filed with the petition, the debtor, unless otherwise directed by the trustee, shall serve the plan and provide certification as specified above.

(2) Objections. At or before the 11 U.S.C. § 341 meeting of creditors, a creditor objecting to confirmation shall file with the court and serve upon the debtor, the debtor's counsel, and the trustee a written objection to confirmation stating the basis for the objection. Objections to confirmation need not be considered by the court unless service has been made in accordance with this rule.

Cross Reference

See Fed. R. Bankr. P. 3015.

3017-1. Disclosure Statement Hearing.

Unless otherwise ordered, the plan proponent shall comply with the following procedures:

(a) The plan proponent may calendar and notice the disclosure statement hearing without necessity of a court order, notwithstanding Official Form No. 12. Notice of the hearing shall be served by mail on the debtor, creditors, equity security holders, United States Trustee, Securities and Exchange Commission, and other parties in interest not less than 32 days prior to the hearing. The notice shall contain the information required by Official Form No. 12 and, unless the court orders otherwise, shall state that the deadline for the filing of objections is 7 days prior to the hearing. The proposed plan and proposed disclosure statement shall be served, with the notice, only on the United States Trustee and the persons mentioned in the second sentence of Fed. R. Bankr. P. 3017(a). Proof of service of the foregoing documents must be filed at least 3 business days prior to the hearing.

(b) At least 3 business days prior to the hearing (and any continued hearing), the plan proponent shall advise the judge's chambers by telephone whether the proponent intends to go forward with the hearing.

(c) The plan proponent may establish that the disclosure statement meets the applicable requirements of 11 U.S.C. §§ 1125(a) and (b) by offer of proof, declaration or, if the court so permits or requires, live testimony. In all cases, a competent witness must be present. Briefs are not required.

(d) At the conclusion of the disclosure statement hearing, the plan proponent shall be prepared to advise the court of the amount of court time the confirmation hearing will require. If a contested confirmation hearing is anticipated, the court will entertain requests that scheduling procedures be established concerning the filing of briefs, exchange and marking of exhibits, disclosure of witnesses, and discovery.

(e) In the event the plan proponent receives an objection to the disclosure statement, the proponent must make a good faith effort to confer with the objecting party to discuss the disclosure statement and to resolve the objection on a consensual basis.

(f) A plan proponent desiring a continuance of the hearing on a disclosure statement shall appear at the scheduled hearing to request a continuance.

(g) Upon approval of the disclosure statement, the plan proponent shall submit to the court a proposed Order Approving Disclosure Statement and Fixing Time conforming to Official Form No. 13.

3018-1. Confirmation Hearing.

Unless otherwise ordered, the plan proponent shall comply with the following procedures:

(a) All ballots and a ballot tabulation showing the percentages of acceptances and rejections for each impaired class, in number and dollar amount, must be filed at least 3 business days prior to the confirmation hearing. The tabulation should also identify any unimpaired class(es) and state the reason that such class is unimpaired under 11 U.S.C. § 1124. A copy of the ballot tabulation should be served on the United States Trustee, counsel for the Official Creditors' Committee, or if no such committee has been appointed, the creditors included on the list filed pursuant to Federal Rule of Bankruptcy Procedure 1007(b), and any parties objecting to confirmation.

(b) Proof of service of the plan, disclosure statement, official ballot, and Order Approving Disclosure Statement must be filed at least 3 business days prior to the confirmation hearing.

(c) Three business days prior to the hearing and any continued hearing, the plan proponent shall advise the judge's chambers by telephone whether the proponent intends to go forward with the hearing.

(d) If the plan has been accepted by the requisite majorities and no objection to confirmation has been filed, the plan proponent may establish that the plan meets the applicable requirements of Chapter 11 by offer of proof, declaration or, if the court so permits or requires, live testimony. In all cases, a competent witness must be present to testify, inter alia, as to the status of any post-petition trade debt, taxes or other obligations, the feasibility of the plan, and the Chapter 7 equivalency requirements. Memoranda in support of confirmation are not required but may be filed at least three (3) days prior to the confirmation hearing, with copies served on the United States Trustee, counsel for the Official Creditors' Committee, or if no such committee has been appointed, the creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(b), and any parties objecting to confirmation.

(e) The plan proponent and any party objecting to confirmation shall meet and confer prior to the confirmation hearing regarding disputed issues and the conduct of the confirmation hearing.

(f) A plan proponent desiring a continuance of the confirmation hearing shall appear at the scheduled hearing to request a continuance.

3022-1. Final Decree.

At the confirmation hearing, the proponent of the plan shall advise the court when all post-confirmation court proceedings can be completed. The court may set deadlines for filing reports and an application for a final decree.

PART IV.
AUTOMATIC STAY; DEBTOR'S DUTIES AND BENEFITS

4001-1. Motions For Relief From Stay.

(a) Procedure and Supporting Documents. A motion for relief from stay shall be so titled and shall be accompanied by the declaration of an individual competent to testify which sets forth the factual basis for the motion. The motion shall describe the relief sought and shall advise the respondent to appear personally or by counsel at the preliminary hearing.

(b) Cover Sheet. Every motion for relief from stay shall be filed with a completed Relief From Stay Cover Sheet. Relief From Stay Cover Sheets shall be available in the clerk's office.

(c) Preliminary Hearings. Unless otherwise ordered, motions shall be set for preliminary hearing not less than 15 days after service. Motions shall be served the same day they are filed or sent for filing.

(d) Hearing Dates. The clerk of the court shall make available a list of available hearing dates. It is the responsibility of the moving party to select a hearing date which satisfies the notice requirements of this rule.

(e) Oral Testimony. Unless otherwise ordered, no oral testimony will be received by the court at any hearing on a motion for relief from stay.

(f) Response. A respondent will not be required to, but may, file responsive pleadings, points and authorities, and declarations for any preliminary hearing.

Cross Reference

See Fed. R. Bankr. P. 4001.

4002-1. Designation of Responsible Individual For Corporation or Partnership Debtor.

Every corporate or partnership debtor or debtor-in- possession shall file with the court an application and proposed order appointing a natural person to be responsible for the duties and obligations of the debtor or debtor-in-possession. The order shall identify such person by name and include the person's address, telephone number, and position within the organization. If the duties are to be divided among two or more individuals, the responsibilities of each shall be specified. The application and order shall be filed with the petition, or promptly thereafter.

4002-2. Obligations of Trustee Regarding Scheduled Consumer Debt.

The trustee shall, pursuant to 11 U.S.C. §704(3), advise the debtor in writing of the debtor's obligations under 11 U.S.C. §521(2)(B) on the receipt of the statement of intention, or in any event, no later than the meeting of creditors pursuant to 11 U.S.C. §341.

4003-1. Exempt Property.

(a) Orders Setting Apart Exemptions. If no objection to a claim of exemption has been made in a Chapter 7 case within the time provided in Fed. R. Bankr. P. 4003(b), the court may, at any time, without a hearing and without reopening the case, enter an order approving the exemptions as claimed.

(b) Spousal Exemption Waiver. In a case where the spouse of the debtor is a nondebtor and the debtor wishes to elect the exemptions provided by California Code of Civil Procedure § 703.140(b), the debtor shall file the waiver referred to in California Code of Civil Procedure § 703.140(a)(2) by the deadline for filing the schedules and statements required by Fed. R. Bankr. P. 1007 unless the court extends the deadline for cause shown.

(c) Deadline for Filing Objection to Claim of Exemption in Chapter 11 Case. In a Chapter 11 case involving an individual, the last day to object to a claim of exemption is extended pursuant to Fed. R. Bankr. P. 4003(b) to and until the date on which the hearing on confirmation of the Chapter 11 plan is held.

PART V.
COURTS AND CLERKS

5011-1. General Reference.

(a) General Referral. Pursuant to 28 U.S.C. § 157(a), all cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to a case under Title 11 are referred to the bankruptcy judges of this district, except as provided in B.L.R. 5011-1(b).

(b) Pending District Court Proceedings. Any civil proceeding arising in or related to a case under Title 11 that is pending in the district court on the date the Title 11 case is filed shall be referred to a bankruptcy judge only upon order of the district judge before whom the proceeding is pending. Such an order may be entered upon the motion of a party, the district judge's own motion, or upon the recommendation of a bankruptcy judge.

(c) Automatic Stay. Nothing in this rule shall modify any automatic stay imposed by 11 U.S.C. §§ 362(a), 922, 1201(a), or 1301(a).

5011-2. Withdrawal of Reference.

(a) Procedure. A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) shall be filed with the clerk of the bankruptcy court. The clerk of the bankruptcy court shall transmit the motion forthwith to the district court. The motion shall be assigned by the clerk of the district court to a judge of the district court pursuant to the Assignment Plan.

(b) Recommendation of Bankruptcy Judge. A bankruptcy judge may, on the judge's own motion, recommend to the district court that a case or proceeding be withdrawn under 28 U.S.C. § 157(d). Such a recommendation shall be served on the parties to the case or proceeding and forwarded to the clerk of the district court, and the recommendation shall be assigned to the judge of the district court pursuant to the Assignment Plan.

(c) Assignment. A withdrawn case or proceeding shall be assigned to the district judge who ordered the withdrawal of reference.

Cross Reference

See Fed. R. Bankr. P. 5011.

PART VI.
COLLECTION AND LIQUIDATION OF ESTATE

6004-1. Motions to Sell Free and Clear of Liens.

(a) Procedure. A motion to sell free and clear of liens under 11 U.S.C. § 363(f) shall identify by name, immediately below the caption, the lienholders whose property rights are affected by the motion. The affected lienholders shall be served with a complete set of moving papers pursuant to Fed. R. Bankr. P. 7004(b). Service shall be made at least 28 days before the hearing date, any opposition must be filed and served on the party requesting relief at least 14 days prior to the hearing date, and any reply must be filed and served not less than 7 days before the hearing date.

(b) Supporting Papers. The motion shall be supported by the declaration of an individual competent to testify which sets forth the factual basis demonstrating that the moving party comes within 11 U.S.C. § 363(f)(1)-(5). The motion shall identify which subsection of 11 U.S.C. § 363(f) the moving party comes within.

(c) Motions to Sell Property. A motion to sell the subject property may be combined with a motion to sell free and clear of liens. Notice of a motion to sell property shall be given to those specified in Fed. R. Bankr. P. 2002(a).

(d) Form of Order. The order granting a motion to sell free and clear of liens shall specify each lienholder whose interest is to be affected by the order.

6006-1. Motions to Assume or Reject Executory Contracts.

(a) Assumption and Rejection. A motion to assume, reject or assign an executory contract or unexpired lease shall be on notice to: (1) the other contracting parties and to those entities entitled to receive notice under the terms of the contract or lease; (2) the non-insider creditors that hold the 20 largest unsecured claims or to the creditors committee, if one has been appointed; and (3) any party who has requested notice pursuant to Fed. R. Bankr. P. 2002. Notwithstanding the foregoing, a Chapter 7 Trustee may move to reject an unexpired lease of nonresidential real property where the debtor is the tenant on 24 hours notice given only to the other party to the lease, and such motions will normally be considered by the court without a hearing.

(b) Performance of Obligations. Unless the court orders otherwise, any motion to compel performance of a lease of non-residential real property or extend the time for performance under 11 U.S.C. § 365(d)(3) shall be on notice to: (1) all other parties to such lease; (2) the non-insider creditors that hold the 20 largest unsecured claims or the creditors' committee, if one has been appointed; and (3) any party who has requested notice pursuant to Fed. R. Bankr. P. 2002.

(c) Extensions. Unless the court orders otherwise, any motion under 11 U.S.C. § 365(d)(4) to extend the 60 day period to assume or reject an unexpired lease of real property shall be on notice only to: (1) the other contracting parties and to those entities entitled to receive notice under the terms of the contract or lease; (2) the non-insider creditors that hold the 20 largest unsecured claims or the creditors' committee, if one has been appointed; and (3) any party who has requested notice pursuant to Fed. R. Bankr. P. 2002(i).

Cross Reference

See Fed. R. Bankr. P. 6006.

PART VII.
ADVERSARY PROCEEDINGS

7003-1. Cover Sheet.

Every complaint initiating an adversary proceeding and every notice of removal pursuant to Fed. R. Bankr. P. 9027 shall be accompanied by a completed Adversary Proceeding Cover Sheet in a form prescribed by the clerk's office. Adversary Proceeding Cover Sheets shall be available in the clerk's office.

7007-1. Motions In Adversary Proceeding.

(a) Time. Except as otherwise ordered, and except for motions made during the course of trial, all motions shall be filed and served at least 28 days before the hearing date.

(b) Opposition. Any opposition to a motion shall be filed and served at least 14 days before the hearing date.

(c) Statement of No Opposition. If the party against which the motion is directed does not oppose the motion, that party shall file a Statement of No Opposition within the time for filing and serving any opposition.

(d) Counter-Motions. Together with an opposition, a party responding to a motion may file a counter-motion related to the subject matter of the original motion. Such counter-motion shall be noticed for hearing on the same date as the original motion.

(e) Reply. Any reply to an opposition, or opposition to a counter-motion, shall be filed and served by the moving party at least 7 days before the hearing.

(f) Motion Papers. B.L.R. 9013-1 shall apply to motions filed in adversary proceedings.

7016-1. Case Management and Discovery.

Except as otherwise ordered, the following provisions of the Federal Rules of Civil Procedure, as amended, shall not apply in any adversary proceedings or contested matters:

(a) That portion of FRCivP 16(b) that fixes a deadline for entry of a scheduling order;

(b) FRCivP 26(a)(1)-(4);

(c) FRCivP 26(d)'s stay of discovery until completion of the meet-and-confer requirement of FRCivP 26(f);

(d) FRCivP 26(f);

(e) FRCivP 30(a)(2)(C);

(f) FRCivP 31(a)(2)(C); and

(g) Those portions of FRCivP 32(a), 33(a), 34(b), and 36(a) that incorporate the requirements of FRCivP 26(d).

7042-1. Related Adversary Proceedings.

(a) Related Adversary Proceedings. Any adversary proceeding is related to another when both concern:

(1) Some of the same parties and is based on the same or similar claims; or

(2) Some of the same property, transactions or events; or

(3) The same facts and the same questions of law; or

(4) When both adversary proceedings appear likely to involve duplication of labor or might create conflicts and unnecessary expenses if heard by different judges.

(b) Notice of Related Adversary Proceedings. Whenever a party knows or learns that an adversary proceeding, filed in or removed to this court, is (or the party believes that the action may be) related to another adversary proceeding which is or was pending in this court, the party shall promptly file a Notice Of Related Adversary Proceeding. The Notice shall be filed in the later-filed adversary proceeding in which the party is appearing and shall be served on all known parties to each related case. A chambers copy of the Notice Of Related Adversary Proceeding shall be lodged with the assigned judge in each identified adversary proceeding. (*Amended effective July 1, 1997*)

(c) Contents of Notice. A Notice of Related Adversary Proceeding shall include:

(1) The date the related adversary proceeding was filed and the current status of that proceeding; and

(2) The title and case number; and

(3) A brief statement of the relationship of the actions according to the criteria set forth in section (a) above.

(d) Transfer. The court may, on its own motion or upon the motion of a party in interest, order an adversary proceeding transferred to another bankruptcy judge based on the court's determination that the proceeding is related and that the transfer will promote efficient adjudication of the actions or avoid inconsistent or conflicting rulings.

(e) Procedure. A motion by a party in interest to transfer an adversary proceeding or proceedings shall be addressed to the judge presiding in the earlier filed adversary proceeding and served on all known parties in each of the related adversary proceedings.

PART VIII.
APPEALS TO DISTRICT COURT

8006-1. Record on Appeal.

The record on appeal shall include a transcript of the hearing or a summary thereof agreed upon by all parties.

8007-1. Duties of District Court Clerk Upon Receipt of Appeal.

(a) Docketing and Notice. Upon receipt of the record on appeal, other than a motion under B.L.R. 8011-1, the district court clerk shall immediately docket the appeal and give notice to all parties to the appeal of:

(1) The date the appeal was entered on the docket;

(2) The assigned district judge;

(3) The dates for filing briefs; and

(4) The date set for oral argument before the district judge.

(b) Briefs. Unless otherwise ordered by the district judge for cause shown:

(1) The appellant shall serve and file a brief within 30 days after entry of the appeal on the docket pursuant to Fed. R. Bankr. P. 8007.

(2) The appellee shall serve and file a brief within 20 days after service of the brief of appellant. If the appellee has filed a cross-appeal, the brief of appellee shall contain the issues and argument pertinent to the cross-appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has filed a cross-appeal, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross-appeal within 10 days after service of the reply brief of the appellant.

Cross Reference

See Fed. R. Bankr. P. 8007.

8011-1. Dismissal For Failure To Perfect Appeal.

(a) Dismissal by District Court. If the appellant shall fail to perfect the appeal in the manner prescribed by Fed. R. Bankr. P. 8006, any appellee may file a motion in the district court to dismiss the appeal. The motion shall be supported by an affidavit or declaration of counsel for the moving party, setting forth the date and substance of the judgment or order from which the appeal was taken, the date upon which notice of appeal was filed, and the facts showing appellant's failure to perfect the appeal in the manner prescribed by Fed. R. Bankr. P. 8006. Appellant may file an opposition to the motion in accordance with Civil L. R. 7-3.

(b) Recommendation by Bankruptcy Court. If the appellant shall fail to perfect the appeal in the manner prescribed by Fed. R. Bankr. P. 8006, the bankruptcy court may, on its own motion, transmit the notice of appeal to the district court with a recommendation that the appeal be dismissed. The transmittal shall be accompanied by a certificate of the bankruptcy judge indicating the reasons for the recommendation. The clerk of the bankruptcy court shall serve copies of the transmittal and the certificate on all parties.

(c) Procedure. Upon receipt of a motion under B.L.R. 8011-1(a) or a recommendation under B.L.R. 8011-1(b), the clerk of the district court shall docket the appeal and schedule it for briefing and hearing only for the purpose of determining whether or not the appeal should be dismissed, and shall give notice thereof and of the assigned judge to all parties and to the bankruptcy judge.

Cross Reference

See Fed. R. Bankr. P. 8011.

PART IX.
GENERAL PROVISIONS

9006-1. Enlargement Or Shortening Of Time.

(a) Requirements for Changing Time. Except as provided in paragraph (b), approval of the court is required to enlarge or to shorten time to perform any act or to file any paper pursuant to the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or these bankruptcy local rules.

(b) Stipulation for Changing Time. Parties may stipulate in writing, without a court order, to extend the time within which to answer or otherwise respond to the complaint or to enlarge or shorten the time in matters not required to be filed with the court, provided the change will not alter the date of any hearing or conference set by the court. Such stipulations shall be promptly filed pursuant to Civil L.R. 5-1. (*Amended effective July 1, 1997*)

(c) Requests for Changing time. Any request to enlarge or shorten time may be made by stipulation or motion. Absent exigent circumstances, any motion shall be heard on at least 72 hours notice to the respondent. Any request, whether made by stipulation or motion, shall be accompanied by a declaration stating:

(1) The reason for the particular enlargement or shortening of time requested;

(2) Previous time modifications related to the subject of the request, whether by stipulation or court order;

(3) The effect of the requested time modification on the schedule for the case or proceeding; and

(4) Where the request is not made by stipulation, the efforts made to speak with the respondent and, if the movant has spoken with the respondent, the reasons given for any refusal to agree to the request.

9010-1. Appearance of Corporation or Partnership Through Counsel.

(a) Appearance and Filing of Papers. A corporation, partnership, or any entity other than a natural person may not appear as a party in an adversary proceeding or a contested matter or as a debtor in a bankruptcy case except through counsel admitted to practice in this district. Petitions and pleadings from parties who are not individuals must bear the signature of an attorney.

(b) Chapter 11 Cases. A corporation, partnership, or any entity other than a natural person may not serve as a debtor-in-possession in a Chapter 11 case unless represented by counsel. If a corporation or partnership does not obtain court approval of counsel promptly, the court, after notice as prescribed by Fed. R. Bankr. P. 2002(a), may dismiss the case, order it converted to Chapter 7, or order the appointment of a trustee.

(c) Excepted Matters. Nothing herein shall preclude a corporation, partnership, or any entity other than a natural person from filing a proof of claim, an application for compensation, a reaffirmation agreement, or from appearing at a meeting of creditors through an officer or other authorized agent.

Cross Reference

See Fed. R. Bankr. P. 9010.

9011-1. Sanctions and Penalties for Non-compliance.

Failure of counsel or of a party to comply with any provision of these rules or the Federal Rules of Bankruptcy Procedure shall be grounds for imposition by the court of appropriate sanctions.

9013-1. Motion Papers.

(a) Matters Covered by Rule. This rule shall apply to initial moving papers, opposition papers, and reply papers in any motion, application, or objection in any case or adversary proceeding.

(b) Form. In one filed document, motion papers shall address:

(1) In the first paragraph, notice of the motion including date and time of hearing (if any);

(2) In the second paragraph, a concise statement of what relief or court action the movant seeks; and

(3) In the third and following paragraphs, a statement of the issues to be cited, a succinct statement of the relevant facts, and the argument of the party, citing supporting authorities.

(c) Length. Unless the court expressly orders otherwise, initial moving papers and opposition papers shall not exceed 25 pages of text, and reply papers shall not exceed 15 pages of text. Any moving papers, opposition, or reply papers exceeding 10 pages of text shall also include a table of contents and a table of authorities.(*Amended effective July 1, 1997*)

(d) Affidavits or Declarations.

(1) Factual contentions made in support of or in opposition to any motion, application or objection should be supported by affidavits or declarations and appropriate references to the record. Extracts from depositions, interrogatory answers, requests for admission and other evidentiary matter must be appropriately authenticated by affidavit or declaration.

(2) Affidavits and declarations shall contain only facts, shall conform as far as possible to the requirements of Fed. R. Civ. P. 56(e), and shall avoid conclusions and argument. Any statement made upon information or belief shall specify the basis therefor. Affidavits and declarations not in compliance with this rule may be stricken in whole or in part.

(3) Each affidavit or declaration shall be filed as a separate document.

(e) Supplementary Materials. Prior to the noticed hearing date, counsel may bring to the court's attention relevant judicial opinions published after the date the opposition or reply was filed by filing and serving a Statement of Recent Development, containing a citation to and providing a copy of the new opinion without argument. Otherwise, once a reply is filed, no additional memoranda, papers or letters shall be filed without prior court approval.

(f) Proposed Order. A proposed form of order shall not be submitted as a separate document with either the motion, application, objection, or opposition thereto. A copy of a proposed form of order may, but need not, be attached as an exhibit to a motion, application, objection, or opposition thereto. The moving party shall bring a proposed form of order to the hearing.

9013-2. Motions; To Whom Made.

(a) Assigned Case. Motions, applications and objections will be determined by the judge to whom the case or proceeding is assigned, except as may be otherwise ordered by the assigned judge. In the judge's discretion, or upon request by counsel and with the judge's approval, a motion may be determined without oral argument, or by conference telephone call.

(b) Unassigned Case or Judge Unavailable. A motion, application, or objection may be presented to any other bankruptcy judge of the same division as the assigned judge or, if no such judge is available, to the Chief Bankruptcy Judge or Acting Chief Bankruptcy Judge when:

(1) The assigned judge is unavailable and an emergency requires prompt action; or

(2) An order is necessary before an action or proceeding can be filed.

(c) Unavailable. For purposes of this rule, a judge is unavailable if the judge has filed a certificate of unavailability or such unavailability is certified by the judge's courtroom deputy, law clerk, judicial assistant or secretary.

9013-3. Service.

(a) Service by Mail. The time limits established in these bankruptcy local rules contemplate that, unless otherwise ordered, service of all papers governed by these rules will be accomplished by first class mail.

(b) Proof of Service. A proof of service shall identify the capacity in which the person or entity was served. Capacity to be identified includes: Debtor(s); Attorney for Debtor(s); Trustee; Attorney for Trustee; Twenty Largest Unsecured Creditors; and Special Notice List. If notice to the 20 largest unsecured creditors is required, and there are less than 20 unsecured creditors of the estate, the proof of service shall also indicate that all unsecured creditors were served. This rule shall not apply to motions and applications served on all creditors or motions in adversary proceedings.

Cross Reference
See Fed. R. Bankr. P. 9013.

9014-1. Case Motions and Objections.

(a) Matters Covered By Rule. This rule shall apply to any motion, application or objection with respect to which the Bankruptcy Code provides that relief may be obtained after "notice and a hearing" or similar phrase, but does not apply to: (1) motions for relief from the automatic stay; (2) proceedings that must be initiated by complaint under Fed. R. Bankr. P. 7001 (adversary proceedings) or motions therein; (3) hearings on approval of disclosure statements and confirmation of Chapter 11, 12 and 13 plans; and (4) matters that may properly be presented to a judge *ex parte*.

(b) Procedures For Hearings and Disposition.

(1) Hearing Required. Unless otherwise ordered, the following shall be set for an actual hearing:

(A) Motions governed by Fed. R. Bankr. P. 4001 (b), (c), and (d) other than motions to approve agreements to modify or terminate the automatic stay;

(B) Hearings on applications for compensation or reimbursement of expenses, totaling in excess of $500, other than applications for compensation for appraisers, auctioneers, and real estate brokers;

(C) Motions to dismiss a case, other than a debtor's request for dismissal under 11 U.S.C. §§ 1208(b) or 1307(b), or a Chapter 13 trustee's request for dismissal under 11 U.S.C. § 1307(c);

(D) Motions to appoint a trustee or an examiner;

(E) Motions to sell property free and clear of liens; and

(F) Objections to a debtor's claim of exemption.

(2) Hearing Permitted. In addition to the required hearings described in B.L.R. 9014-1(b)(1), any matter within the scope of this rule may be set for a hearing.

(3) Notice and Opportunity for Hearing. Unless otherwise ordered, a party in interest may initiate a request for relief, without setting a hearing, regarding any matter within the scope of this rule, other than those matters described in B.L.R. 9014-1(b)(1).

(A) Notice. A request for relief governed by B.L.R. 9014-1(b)(3) shall be accompanied by a notice and shall state conspicuously:

(i) That Bankruptcy Local Rule 9014-1 of the United States Bankruptcy Court for the Northern District of California prescribes the procedures to be followed and that any objection to the requested relief, or a request for hearing on the matter must be filed and served upon the initiating party within 20 days of mailing of the notice;

(ii) That a request for hearing or objection must be accompanied by any declarations or memoranda of law the party objecting or requesting wishes to present in support of its position;

(iii) That if there is not a timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default; and

(iv) Either:

(a) That the initiating party will give at least 10 days written notice of hearing to the objecting or requesting party, and to any trustee or committee appointed in the case, in the event an objection or request for hearing is timely made; or

(b) The tentative hearing date.

(B) Procedure for Tentative Hearing Dates. A tentative hearing shall be set at least 10 calendar days after the last date for parties to file objections or requests for hearings in accordance with B.L.R. 9014-1(b)(3)(A)(i). The tentative hearing will not go forward unless an objection or request for hearing is timely filed and served, in which case the party initiating the proceedings under B.L.R. 9014-1(b)(3) shall file and serve not less than 5 days before the hearing, notice that the tentative hearing will be conducted as an actual hearing. Such notice is to be in writing, and is to be given to the objecting or requesting party, any trustee and any committee appointed in the case, and the court. The initiating party shall bring a copy of the proof of service of the notice to the hearing. The initiating party shall also give 5 days telephonic notice to the judge's calendar clerk that the tentative hearing will be an actual hearing.

(C) Conduct of Hearing. At the hearing the court will proceed in accordance with B.L.R. 3007-1 on objections to claims. On other matters in which the court determines that there is a genuine issue of material fact, the court may treat the hearing as a status conference and schedule further hearings as appropriate.

(4) Relief Upon Default. When no objection or request for a hearing has been filed or served within the time provided in B.L.R. 9014-1(b)(3)(A)(i), the initiating party may request relief by default by submitting a request for entry of an order by default and a proposed order. A copy of the original motion, application, or objection shall be attached to the request. On an objection to claim, a copy of the claim, absent any attachments or exhibits, shall also be included. The request shall be accompanied by a proof of service of the papers initiating the request, and a declaration confirming that no response has been received.

(A) In the case of an objection to a claim, a motion to avoid a lien pursuant to 11 U.S.C. § 522(f), or other request for relief as against an identified, named entity, the request for entry of order by default shall be served upon the entity against whom relief is sought. If relief is sought against any entity that has filed a claim, all papers shall be mailed to the address shown on the proof of claim.

(B) In cases seeking relief generally, and not against an identified, named entity, the request for entry of order by default and related papers shall be served upon the debtor, any trustee, and any committee of unsecured creditors that has been appointed in the case.

(C) Upon filing of an appropriate request for entry of an order by default, with service in accordance with B.L.R. 9014-1(b)(4), the court may grant the requested relief.

(c) Schedule For Filing of Papers.

(1) Where the matter is governed by B.L.R. 9014-1(b)(1), or the initiating party desires a hearing under B.L.R. 9014-1(b)(2), and relief is sought against an identified, named entity, the motion, notice of the motion, supporting declarations, memoranda, and all other papers shall be filed and served at least 28 days before the actual scheduled hearing date. Any opposition shall be filed and served on the initiating party at least 14 days prior to the actual scheduled hearing date. Any reply shall be filed and served at least seven days prior to the actual scheduled hearing date. Notwithstanding the foregoing, no responsive pleading to an objection to a claim of exemption shall be required.

(2) Where the matter is governed by B.L.R. 9014-1(b)(1) or (b)(2) and relief is sought generally, and not against an identified, named entity, the motion or application, notice of the motion or application, supporting declarations, memoranda, and all other papers shall be filed and served at least 20 days before the actual scheduled hearing date. Any opposition to the requested relief shall be filed and served on the initiating party no less than 5 days before the actual scheduled hearing date.

(3) Where the matter is governed by B.L.R. 9014-1(b)(3), the initiating party may file and serve any reply to the objecting party's opposition no less than 5 days before the hearing.

(d) Notice For Sale of Certain Personal Property. A Chapter 7 Trustee may, without the necessity of an order shortening time:

(1) Set for hearing on 10 days notice any motion to sell property of the estate free and clear of, or subject to liens, if the subject property is situated on leased premises for which the estate is accruing periodic administrative rent; and

(2) Move to reject an unexpired lease of nonresidential real property where the debtor is the tenant as provided in B.L.R. 6006-1(a).

9015-1. Jury Trial of Right.

FRCivP 38(a)-(d) applies in adversary proceedings.

9015-2. Jury Trials and Personal Injury and Wrongful Death Claims.

(a) Determination of Right. In any proceeding in which a demand for jury trial is made, the bankruptcy judge shall, upon the motion of one of the parties, or upon the bankruptcy judge's own motion, determine whether the demand was timely made and whether the demanding party has a right to a jury trial. The bankruptcy judge may, on the judge's own motion, determine that there is no right to a jury trial in a proceeding even if all of the parties have consented to a jury trial.

(b) Certification to District Court. In a non-core proceeding under 28 U.S.C. § 157(c)(1), if the bankruptcy judge determines that the demand was timely made and the party has a right to a jury trial, and if all parties have not filed written consent to a jury trial before the bankruptcy judge, the bankruptcy judge shall certify to the district court that the proceeding is to be tried by a jury and that the parties have not consented to a jury trial in the bankruptcy court. Upon such certification, reference of the proceeding shall be automatically withdrawn, and the proceeding assigned to a judge of the district court pursuant to the Assignment Plan.

(c) Jury Trial in Bankruptcy Court. The bankruptcy judges of this district are hereby specially designated to conduct jury trials pursuant to 28 U.S.C. § 157(e). If the bankruptcy judge determines that a jury demand was timely made and the demanding party has a right to jury trial, and if all parties expressly consent to a jury trial before the bankruptcy judge, the bankruptcy judge shall try the proceeding by jury and shall enter judgment at the conclusion of the trial.

(d) Personal Injury and Wrongful Death Claims. If, upon timely motion of a party or upon the judge's own motion, the bankruptcy judge determines that a claim is a personal injury tort or wrongful death claim requiring trial by a district court judge, the bankruptcy judge shall certify to the district court that the claim is one which requires trial in the district court under 28 U.S.C. § 157(b)(5). Upon such certification, the reference of the claim shall be automatically withdrawn, and the claim assigned to a judge of the district court pursuant to the Assignment Plan.

(e) Procedure. In any proceeding within the jurisdiction created by 28 U.S.C. § 1334, FRCivP 38(a)-(d), 39, 47-51, and 81(c) shall govern the demand for and conduct of jury trials.

(f) Remand and Abstention. Nothing contained in this rule shall be construed to preclude the entry of any order of remand or abstention.

9021-1. Submission of Orders.

(a) Prior to Hearings. No proposed forms of orders granting or denying motions shall be submitted with the moving or opposition papers prior to hearing. A copy of a proposed form of order may be attached as an exhibit to a notice or memorandum.

(b) At Hearings. The prevailing party may submit a proposed order to the judge hearing the motion at the conclusion of the hearing after permitting all other counsel appearing at the hearing to review the proposed order.

(c) After Hearings. If an order is not submitted to the judge at the conclusion of the hearing, the prevailing party, or such other party ordered to do so by the judge hearing the motion, shall submit a proposed order to the judge promptly thereafter. The order shall contain the signatures of any other counsel who appeared at the hearing, approving it as to form, or shall be accompanied by a proof of service evidencing service of the proposed order on all such counsel. Orders not approved as to form will ordinarily be lodged for 7 days after service.

9022-1. Notice Of Entry Of Order Or Judgment.

(a) Submissions Necessary for Notice of Entry of Order. Unless otherwise directed, the party submitting a form of order or judgment in contested matters and adversary proceedings shall submit:

(1) An original and one copy of a list of the names and addresses of the submitting and contesting parties, and the United States Trustee;

(2) Sufficient copies of the order or judgment for the submitting party, each contesting party, and the United States Trustee; and

(3) Two stamped envelopes addressed to the submitting party and one stamped envelope addressed to each contesting party and the United States Trustee.

(b) Definition of Contesting Party. For purposes of this rule, the term contesting party shall mean any identified, named party against whom relief is sought unless that party:

(i) has stipulated in writing or in open court to the relief sought; or

(ii) was present when the order or judgment was signed in open court.

To the extent relief is sought on notice to creditors generally, only those creditors that file an objection or request for a hearing, or that appear at the hearing and object orally to the relief sought, shall be considered identified, named parties against whom relief is sought.

(c) Procedures. Once the order or judgment is signed, a conformed copy will be mailed to the submitting party. Upon entry on the docket of the order or judgment, the clerk will note the date of entry on the conformed copies and serve them by mail on the parties named on the list referred to in paragraph (a)(1). The clerk will enter service of the notice on the docket.

9029-1. Guidelines.

The judges of the bankruptcy court or any division thereof may adopt, and as needed revise, guidelines concerning the allowance and disallowance of professional fees and expense reimbursement and the contents and format of applications therefor filed pursuant to 11 U.S.C. §§ 330(a) and 331 and Fed. R. Bankr. P. 2016(a), the contents of applications for approval of cash collateral and financing stipulations pursuant to 11 U.S.C. §§ 363(c)(2) or 364(c) and Fed. R. Bankr. P. 4001(b), (c), or (d), and such other matters as the judges or divisions may deem appropriate. Copies of any guidelines so adopted shall be available in the clerk's office of any division in which they are effective. Although referenced herein, such guidelines are not intended to be local rules, and shall not have the force and effect thereof.

9033-1. Orders and Judgments in Non-core and Contempt Proceedings.

(a) Objections. Any objection to the proposed findings of fact and conclusions of law or proposed order or judgment in a noncore proceeding or to an order in a contempt proceeding governed by Fed. R. Bankr. P. 9020(b) shall state:

(1) The issues raised by the objections;

(2) The specific portion of the proposed findings of fact and conclusions of law or proposed judgment or order to which objection is made or, in the case of a contempt proceeding, the specific portion of the order or judgment and any accompanying findings of fact and conclusions of law, to which objection is made; and

(3) Whether the objecting party requests that oral testimony be heard by the judge of the district court, the reason for requesting oral testimony, and the issues on which oral testimony is requested. At the time the objection is filed, the objecting party shall file in the bankruptcy court a designation of the record for review, which shall include a transcript of the trial or hearing in the bankruptcy court.

(b) Response to Objections. Any response to the objection referred to in B.L.R. 9033-1(a) shall state:

(1) Whether oral testimony should be heard by the judge of the district court; and

(2) The issues on which oral testimony should be heard. At the time the response is filed, the non-objecting party shall file any additional designations of the record for review.

(c) Procedure on Objection. If an objection is filed, the clerk of the bankruptcy court shall, within 30 days after the time for filing a response has expired, transmit the proposed findings of fact and conclusions of law and proposed order of judgment or, in the case of a contempt proceeding, the order or judgment and any accompanying findings of fact and conclusions of law, together with the record, to the clerk of the district court, who shall assign the matter to a judge of the district court pursuant to the Assignment Plan. The clerk of the district court shall give notice of the transmittal and assignment to all parties to the proceeding. A hearing on the objection, or a status conference for the purpose of determining what further proceedings are appropriate, shall be scheduled in the district court in every proceeding in which an objection is filed in accordance with this rule.

(d) Procedure Absent Objection. If no objection is filed within the time specified, unless otherwise ordered, when the proposed order or judgment is in a non-core proceeding pursuant to 11 U.S.C. § 157(c)(1), the clerk of the bankruptcy court shall transmit the proposed findings of fact and conclusions of law and proposed order or judgment to the clerk of the district court, with a certificate that no objection has been filed and a request that the proposed findings of fact, conclusions of law, and order or judgment be assigned to the General Duty Judge.

(e) Incomplete or Defective Objections. If an objection is filed within the time specified which does not, in the clerk's opinion, comply substantially with this rule, the clerk of the bankruptcy court shall bring the matter to the attention of the bankruptcy judge who issued the proposed order or judgment or, in the case of a contempt proceeding, the order or judgment. The bankruptcy judge may issue a recommendation that the matter be treated as if no objection had been filed as described in the preceding paragraph. The clerk of the bankruptcy court shall transmit this recommendation to the clerk of the district court together with the proposed findings of fact and conclusions of law and proposed order or judgment or, in the case of a contempt proceeding, the order or judgment and any accompanying findings of fact and conclusions of law. The clerk of the bankruptcy court shall serve a copy of the recommendation on all parties to the proceeding at the time of the transmittal.

Cross Reference

See Fed. R. Bankr. P. 9020 and 9033.

BANKRUPTCY DISPUTE RESOLUTION PROGRAM

9040-1. Bankruptcy Dispute Resolution Program.

The following local rules govern the Bankruptcy Dispute Resolution Program ("BDRP") in the United States Bankruptcy Court for the Northern District of California.

9040-2. Purpose and Scope.

(a) Purpose. The court recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those disputes. The procedures established by these local rules are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of litigation.

(b) The court also notes that the volume of cases, contested matters and adversary proceedings filed in this district has placed substantial burdens upon counsel, litigants and the court, all of which contribute to the delay in the resolution of disputed matters. A court authorized dispute resolution program, in which litigants and counsel meet with a Resolution Advocate, offers an opportunity to parties to settle legal disputes promptly and less expensively, to their mutual satisfaction. By these local rules the BDRP is adopted for the United States Bankruptcy Court for the Northern District of California.

It is the court's intention that the BDRP shall operate in such a way as to allow the participants to take advantage of and utilize a wide variety of alternative dispute resolution methods. These methods may include but are not limited to: mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be those that are appropriate and applicable as determined by the Resolution Advocate and the parties, and will vary from matter to matter.

(c) Scope. These local rules apply to all matters referred to the BDRP. All of the other bankruptcy local rules apply, except to the extent that they are inconsistent with these bankruptcy local rules 9040-1 through 9050-1.

9041-1. Eligible Cases.

Unless otherwise ordered by the judge handling the particular matter, all controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case, will be eligible for referral to the BDRP except:

(a) Employment and compensation of professionals;

(b) Compensation of trustees and examiners;

(c) Objections to discharge under 11 U.S.C. §727, except where such objections are joined with disputes over dischargeability of debts under 11 U.S.C. §523; and

(d) Matters involving contempt or other types of sanctions.

9042-1. Panel of Resolution Advocates.

(a) The bankruptcy court shall establish and maintain a panel of qualified professionals (the "Panel") who have volunteered and have been chosen to serve as Resolution Advocates for the possible resolution of matters referred to the BDRP.

(b) Resolution Advocates shall serve as members of the Panel for a one year term.

(c) Applications to serve as a member of the Panel shall be submitted to the BDRP Administrator by the deadlines established by the court each year, shall set forth the qualifications described below, and should conform to forms promulgated by the court.

9042-2. Qualifications of Resolution Advocates.

(a) Attorneys. In order to qualify for service as a Resolution Advocate, each attorney applicant shall certify to the court that the applicant:

(1) Is, and has been, a member in good standing of the bar of any state or of the District of Columbia for at least five (5) years;

(2) Is a member in good standing of the federal courts for the Northern District of California;

(3) Has served as the principal attorney of record in active matters in at least three (3) bankruptcy cases (without regard to the party represented) from case commencement to the earlier of the date of the application or conclusion of the case, or has served as the principal attorney of record for a party in interest in at least three (3) adversary proceedings or contested matters from commencement through conclusion; and

(4) Is willing to serve as a Resolution Advocate for the next one year term of appointment, and to undertake to evaluate, mediate or facilitate settlement of matters no more often then once each quarter of that year, subject only to unavailability due to conflicts, personal or professional commitments, or other matters which would make such service inappropriate.

(5) Attorneys who do not have the bankruptcy experience described in B.L.R. 9042-2(a)(3), but who do have adequate alternative dispute resolution training and experience to qualify them for appointment as Resolution Advocates, shall be considered qualified for purposes of this rule provided they satisfy the requirements of B.L.R. 9042-2(a)(1) and (4).

(b) Non-attorney Resolution Advocates. Each non-attorney applicant shall submit a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be appointed to the Panel. In addition, such applicants shall also make the same certification required of attorney applicants as set forth in B.L.R. 9042-2(a)(4).

9042-3. Annual Selection of Resolution Advocates.

Each appointment year the bankruptcy judges of the court will select the Panel from the applications submitted, giving due regard to alternative dispute resolution training and experience and such matters as professional experience and location so as to make the Panel appropriately representative of the public being served by the BDRP. Appointments will be limited to keep the panel at an appropriate size and to ensure that the panel is comprised of individuals who have broad-based experience, superior skills and qualifications from a variety of legal specialties and other professions.

9042-4. Geographic Areas of Service.

The Resolution Advocates on the Panel will indicate to the court the city or cities within the district in which they are willing to act or serve.

9042-5. Training.

Before first serving as a Resolution Advocate on any assigned Matters, each person selected pursuant to B.L.R. 9042-3 shall have completed requisite alternative dispute resolution training provided by the court or approved by the BDRP Administrator.

9043-1. Administration of the BDRP.

A judge of this court will be appointed by the Chief Bankruptcy Judge to serve as the BDRP Administrator. The BDRP Administrator will be aided by a staff member of the court, who will maintain and collect applications, maintain the roster of the Panel, track and compile results of the BDRP, and handle such other administrative duties as are necessary.

9044-1. Assignment to the BDRP.

(a) A contested matter in a case, adversary proceeding, or other dispute (hereinafter collectively referred to as "Matter" or "Matters") may be assigned to the BDRP by order of the judge at a status conference or other hearing, or if requested by the parties by submission of a stipulated order. While participation in the BDRP is intended to be voluntary, any judge, acting *sua sponte* or on the request of a party, may designate specific Matters for inclusion in the program. If a Matter is to be assigned to the BDRP, the parties will be presented with the order assigning the Matter to the BDRP, and with a current roster of the Panel. The parties shall normally be given the opportunity to confer and designate a mutually acceptable Resolution Advocate as well as an alternate Resolution Advocate. If the parties cannot agree, or if the judge deems selection by the court to be appropriate and necessary, the judge shall select a Resolution Advocate. Nothing contained in these local rules is intended to preclude other forms of dispute resolution with consent of the parties and, where required, approval of the court.

(b) The original of the order assigning a Matter to the BDRP shall be docketed and retained in the case or adversary proceeding file and copies shall be mailed promptly by the party so designated by the judge to the assigned Resolution Advocate, the alternate Resolution Advocate, the BDRP Administrator's staff assistant and to all other parties to the dispute. Assignment to the BDRP shall not alter or affect any time limits, deadlines, scheduling matters or orders in any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the court.

9044-2. Service of Resolution Advocate.

No Resolution Advocate may serve in any Matter in violation of the standards set forth in 28 U.S.C. § 455. An attorney Resolution Advocate shall also promptly determine all conflicts or potential conflicts in the same manner as an attorney would under the California Rules of Professional Conduct if any party to the dispute were a client. A non-attorney Resolution Advocate shall promptly determine all conflicts or potential conflicts in the same manner as under the applicable rules pertaining to the Resolution Advocate's profession. If the Resolution Advocate's firm has represented one or more of the parties, the Resolution Advocate shall promptly disclose that circumstance to all parties in writing. A party who believes that the assigned Resolution Advocate has a conflict of interest shall promptly bring the matter to the attention of the Resolution Advocate. If the Resolution Advocate does not withdraw from the assignment, the matter shall be brought to the attention of the court by the Resolution Advocate or any of the parties.

9045-1. Dispute Resolution Procedures.

(a) Availability of Resolution Advocate. Promptly after appointment, a Resolution Advocate not available to serve in the Matter shall notify the parties, the alternate Resolution Advocate, and the BDRP Administrator's staff assistant of that unavailability. The alternate Resolution Advocate shall thereafter serve as the Resolution Advocate.

(b) Initial Telephonic Conference. As soon as practicable after notification of appointment, the Resolution Advocate shall conduct a telephonic conference with counsel for the parties to provide preliminary information to the Resolution Advocate concerning the nature of the Matter, the expectations of the parties, and anything else which will facilitate the process.

(c) BDRP Conference Scheduling. Within seven calendar days of the telephonic conference, the Resolution Advocate shall give notice to the parties of the time and place for the BDRP conference, which conference shall commence not later than thirty calendar days following the date of appointment of the Resolution Advocate, and which shall be held in a suitable neutral setting, such as the office of the Resolution Advocate, at a location convenient to the parties. Upon written stipulation between the Resolution Advocate and the parties, the BDRP conference may be continued for a period not to exceed 30 days.

(d) BDRP Statements. Unless modified by the Resolution Advocate, no later than fifteen (15) calendar days after the date of the order assigning the Matter to the BDRP, each party shall submit directly to the Resolution Advocate, and shall serve on all other parties, a written BDRP statement. Such statements shall not exceed fifteen (15) pages (not counting exhibits and attachments). While such statements may include any information that would be useful, they must:

(1) Identify the person(s), in addition to counsel, who will attend the session as representative of the party with decision making authority;

(2) Describe briefly the substance of the dispute;

(3) Address whether there are legal or factual issues whose early resolution might appreciably reduce the scope of the dispute or contribute significantly to settlement;

(4) Identify the discovery that could contribute most to equipping the parties for meaningful discussions;

(5) Set forth the history of past settlement discussions, including disclosure of prior and any presently outstanding offers and demands;

(6) Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial; and

(7) Indicate presently scheduled dates for further status conferences, pretrial conferences, trial or otherwise.

(e) Statements Not To Be Filed. The written BDRP statements shall not be filed with the court and the court shall not have access to them.

(f) Identification of Participants. Parties may identify in the BDRP statements persons connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the BDRP conference would improve substantially the prospects for making the session productive; the fact that a person has been so identified, shall not, by itself, result in an order compelling that person to attend the BDRP conference.

(g) Documents. Parties shall attach to their written BDRP statements copies of documents out of which the dispute has arisen, e.g., contracts, or those whose availability would materially advance the purposes of the BDRP conference.

9045-2. Attendance at BDRP Conference.

(a) Counsel. Counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in *pro se*) shall personally attend the BDRP conference and any adjourned sessions of that conference. Counsel for each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.

(b) Parties. All individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall personally attend the BDRP conference unless excused by the Resolution Advocate for cause.

(c) Telephonic Appearance. A party or lawyer who is excused from appearing in person at the BDRP conference may be required to participate by telephone.

9045-3. Failure to Attend BDRP Conference.

Willful failure to attend the BDRP conference and other violations of this order shall be reported to the court by the Resolution Advocate and may result in the imposition of sanctions by the court.

9046-1. Conduct of the BDRP Conference.

The BDRP conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. Where necessary, the Resolution Advocate may conduct continued BDRP conferences after the initial session. As appropriate, the Resolution Advocate may:

(a) Permit each party, through counsel or otherwise, to make an oral presentation of its position;

(b) Help the parties identify areas of agreement and, where feasible, formulate stipulations;

(c) Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Resolution Advocate that supports these assessments;

(d) Assist the parties in settling the dispute;

(e) Estimate, where feasible, the likelihood of liability and the dollar range of damages;

(f) Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will equip them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and

(g) Determine whether some form of follow-up to the conference would contribute to the case development process or to settlement.

9047-1. Confidentiality.

(a) All written and oral communications made in connection with or during any BDRP conference, including the BDRP statement referred to in B.L.R. 9045-1(d), shall be subject to all the protections afforded by Fed. R. Evid. 408 and by Fed. R. Bankr. P.7068. The Resolution Advocate may ask the parties to sign a confidentiality agreement provided by the court.

(b) No written or oral communication made by any party, attorney, Resolution Advocate or other participant in connection with or during any BDRP conference may be disclosed to anyone not involved in the Matter. Nor may such communication be used in any pending or future proceeding in this court to prove liability for or invalidity of a claim or its amount. Such communication may be disclosed, however, if all participants in the BDRP, including the Resolution Advocate, so agree. Notwithstanding the foregoing, this B.L.R. 9047-1 does not require the exclusion of any evidence:

> **(1)** Otherwise discoverable merely because it is presented in the course of a BDRP conference; or
>
> **(2)** Offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(c) Nothing in this B.L.R. 9047-1 shall be construed to prevent parties, counsel or Resolution Advocates from responding in absolute confidentiality, to inquiries or surveys by persons authorized by this court to evaluate the BDRP. Nor shall anything in this section be construed to prohibit parties from entering into written agreements resolving some or all of the Matter or entering or filing procedural or factual stipulations based on suggestions or agreements made in connection with a BDRP conference.

9048-1. Suggestions and Recommendations of Resolution Advocate.

If the Resolution Advocate makes any oral or written suggestions to a party's attorney as to the advisability of a change in that party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the party. The Resolution Advocate shall have no obligation to make any written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the clerk or made available in whole or in part, directly or indirectly, to the court.

9049-1. Procedures Upon Completion of BDRP Conference.

Upon the conclusion of the BDRP conference, the following procedure shall be followed:

(a) If the parties have reached an agreement regarding the disposition of the Matter, the parties shall determine who shall prepare the writing to dispose of the Matter, and they may continue the BDRP conference to a date convenient to all parties and the Resolution Advocate if necessary. The court will accommodate parties who desire to place any resolution of a Matter on the record during or following the BDRP conference. Where required, they shall promptly submit the fully executed stipulation to the court for approval;

(b) The Resolution Advocate shall file with the court and serve on the parties and the BDRP Administrator's staff assistant, within ten (10) calendar days, a certificate in the form provided by the court, showing whether there has been compliance with the BDRP conference requirements of these local rules, and whether or not a settlement has been reached. Regardless of the outcome of the BDRP conference, the Resolution Advocate will not provide the court with any details of the substance of the conference.

9049-2. Evaluation.

In order to assist the BDRP Administrator in compiling useful data to evaluate the BDRP, and to aid the court in assessing the efforts of the members of the Panel, the Resolution Advocate shall report to the BDRP Administrator's staff assistant providing an estimate of the number of hours spent in the BDRP conference and statistical and evaluative information, which report shall be on a form provided by the court.

9050-1. Voluntary Service of Resolution Advocates.

The Resolution Advocates will serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses.

APPENDIX
Summary of Notice Requirements[1]
Bankruptcy Local Rules
Northern District of California

Bankruptcy Local Rule Number	Type of Proceeding	Notice Requirement
3015-1(a)	Chapter 12 Confirmation Hearing	Notice of the hearing shall be filed and served by mail at least 32 days before the hearing.
3015-1(b)	Chapter 13 Confirmation Hearing	Plan or summary shall be filed and served by mail to all creditors at least 25 days before the first date set for the 11 U.S.C. § 341 meeting of creditors.
3017-1	Chapter 11 Disclosure Statement Hearing	Notice of the hearing shall be filed and served by mail at least 32 days before the hearing.
3018-1	Chapter 11 Confirmation Hearing	Proof of service of the plan, disclosure statement, official ballot and Order Approving Disclosure Statement; all ballots; and a ballot tabulation must be filed at least 3 business days before the confirmation hearing.
4001-1	Motions for Relief from Stay	Motions shall be filed and served by mail at least 15 days before the preliminary hearing.

[1] This chart is intended only as a summary of the notice provisions of the bankruptcy local rules. It is not a rule and is not to be cited. This chart only covers notice requirements in proceedings before the bankruptcy court, and does not cover time deadlines governing review by the district court or Bankruptcy Appellate Panel of actions of the bankruptcy court.

Bankruptcy Local Rule Number	Type of Proceeding	Notice Requirement
6004-1	Motions to Sell Free and Clear of Liens	Moving papers shall be filed and served at least 28 days before the hearing. Opposition shall be filed and served at least 14 days before the hearing. Any reply shall be filed and served at least 7 days before the hearing.
6006-1(a)	Chapter 7 Trustee's Motions to Reject Nonresidential Real Property Leases	Notice to landlord at least 24 hours before hearing.
7007-1	Motions in Adversary Proceedings	Moving papers shall be filed and served at least 28 days before the hearing. Opposition shall be filed and served at least 14 days before the hearing. Any reply shall be filed and served at least 7 days before the hearing.
9014-1(b)	Notice and Opportunity for Hearing in a Contested Matter	Notice shall state that objections must be filed and served within 20 days after mailing of the notice.
9014-1(c)(1)	Noticed Hearing in Contested Matter with an Identified Opposing Party	Moving papers shall be filed and served at least 28 days before the hearing. Opposition shall be filed and served at least 14 days before the hearing. Any reply shall be filed and served at least 7 days before the hearing.
9014-1(c)(2)	Noticed Hearing in Contested Matter with No Identified Opposing Party	Moving papers shall be filed and served at least 20 days before the hearing. Opposition shall be filed and served at least 5 days before the hearing.
9014-1(c)(3)	Noticed Hearing After Request for Hearing Filed (See B.L.R. 9014-1(b))	Notice of the hearing shall be filed and served at least 10 days before the hearing. Initiating party's reply to opposition shall be filed and served at least 5 days before the hearing.

TABLE OF CONTENTS
CRIMINAL LOCAL RULES

Page

CRIMINAL LOCAL RULES

I. SCOPE, PURPOSE AND CONSTRUCTION

1-1. Title.

These are the Local Rules of Practice in Criminal proceedings before the United States District Court for the Northern District of California. They should be cited as "Crim. L.R. ___."

2-1. Purpose and Construction.

These Rules are promulgated pursuant to 28 U.S.C. § 2071 and FRCrimP 57. They supplement the Federal Rules of Criminal Procedure and shall be construed so as to be consistent with those Rules. The provisions of the Civil Local Rules of the court shall apply to criminal actions and proceedings, except where they may be inconsistent with these criminal local rules, the Federal Rules of Criminal Procedure or provisions of law specifically applicable to criminal cases.

Cross Reference

See Civil L.R. 1-5(f) "*General Orders*" and Civil L.R. 1-5(j) "*Standing Orders of Individual Judges*."

2-2. Definitions. Unless the context requires otherwise, the definitions contained in Civil L.R. 1-5 apply to these local rules.

(a) FREvid. "FREvid" means the Federal Rules of Evidence.

(b) Probation Officer. "Probation Officer" refers to a United States Probation Officer appointed by the United States District Court.

2-3. Certificate of Service.

(a) Party Certificate of Service. Whenever these local rules or other provision of law requires any pleading or paper which is presented for filing in a criminal case to be served upon any party or person, it shall bear on it or have attached to it a certificate of service in a form which complies with Civil L.R. 5-4(a)(2).

(b) Clerk's Certificate of Service. Unless the judge or these local rules require otherwise, any written order of the court in a criminal case shall bear on it or have attached to it a certificate of service by the clerk.

2-4. Lodging Copy for Chambers.

Unless the court orders otherwise, an extra copy of any document filed in a criminal case marked for "Chambers," shall be lodged pursuant to Civil L.R. 5-2(b).

II. PRELIMINARY PROCEEDINGS

5-1. Criminal Case Proceedings before Assignment to a District Judge.

(a) Calendar for Proceedings in Criminal Cases Before Assignment. Each courthouse of this district shall maintain a criminal calendar to hear any matter in a criminal case which has been assigned to that courthouse and which arises before the case is assigned to a district judge.

Cross Reference

Crim L.R. 18-1(a),(b) or (c)

(b) Proceedings before Magistrate Judge prior to Assignment. At each courthouse a magistrate judge shall be designated to hear and decide matters arising before the case has been assigned to a district judge in criminal cases which have been assigned to that courthouse. The designated magistrate judge is empowered to hear and decide any matter on that calendar unless a federal statute or federal rule requires that the matter be decided by a district judge.

(c) Initial Appearance after Arrest. Whenever a person is arrested in this district for a federal offense, the person shall be brought before the nearest available magistrate judge. The magistrate judge before whom the person is brought shall preside over the initial appearance in accordance with FRCrimP 5. All subsequent proceedings shall be conducted at the courthouse where the case has been assigned pursuant to Crim. L.R. 7-1.

(d) Proceedings before a District Judge prior to Assignment. When a matter arises in a criminal case before the case has been assigned to a district judge which a federal statute or federal rule requires be presented to or decided by a district judge, it shall be presented to the General Duty Judge for the courthouse or, if unavailable, to the General Duty Judge at any other courthouse.

Cross Reference

See Civil L.R. 1-5(j) "General Duty Judge."

II. INDICTMENT AND INFORMATION

6-1. Impanelment Of Grand Jury.

The General Duty Judge of each courthouse of this district is empowered to impanel one or more grand juries as the public interest requires. Upon a determination by a General Duty Judge to impanel a grand jury for that courthouse, he or she shall summon a sufficient number of legally qualified residents of the counties served by that courthouse pursuant to Civil L.R. 3-2 to satisfy the requirements of FRCrimP 6(a).

6-2. Grand Jury Administration.

(a) Motions Pertaining to Composition or Term of Empaneled Grand Jury. A request by the government or a grand juror for an order pertaining to service on or the term of an impaneled grand jury shall be made by *ex parte* motion or request to the judge who impaneled the grand jury. If that judge is unavailable within the meaning of Civil L.R. 1-5(n), the motion or request shall be made to the General Duty Judge of the courthouse in which the grand jury sits. Such motions or requests may pertain to matters such as:

(1) A request by a member of a grand jury or by the government that a grand juror be excused**;**

(2) A request by the government to appoint an alternate grand juror;

(3) A motion to extend the term of a grand jury.

(b) Motions Regarding Grand Jury Process or Proceedings. Any government motion regarding those parts of the grand jury's process or proceedings or in aid of its process or proceedings which must be conducted in secret pursuant to FRCrimP 6, may be made under seal by *ex parte* expedited motion to the General Duty Judge of the courthouse at which the grand jury sits. Unless otherwise ordered by the General Duty Judge pursuant to *ex parte* request, any such motion filed by a private party shall be accompanied by proof of service of the motion upon the office of United States Attorney for this district.

7-1. Assignment of Criminal Case.

(a) Designation in Caption of Pleading. In the caption of each complaint, indictment or information immediately following the identification of the pleading, the government shall identify the courthouse to which the action should be assigned pursuant to Crim. L.R. 18-1. After a complaint, indictment or information has been filed in this district and assigned to the appropriate courthouse pursuant to Crim. L.R. 18-1, the clerk shall assign it to a district judge pursuant to the Assignment Plan of the court. The case shall also be assigned to the designated criminal calendar magistrate judge at that courthouse .

(b) Proceedings before Magistrate Judge after Assignment. After a case has been assigned to a district judge pursuant to Crim. L.R. 7-1(a), the criminal calendar magistrate judge may conduct the following proceedings as deemed appropriate:

(1) Appoint counsel;

(2) Appoint an interpreter;

(3) Conduct an arraignment and schedule an appearance before the assigned district judge in no less than 11 nor more than 18 days (except in cases under FRCrimP 20 or 40 (See Crim.. L.R. 20-1 and 40-1));

(4) Accept or enter a plea of not guilty;

(5) Conduct a probation or supervised release preliminary revocation hearing;

(6) Hear and determine motions or matters regarding release or detention;

(7) Set a schedule for disclosure of information pursuant to FRCrimP 16;

(8) In a case transferred to this district under FRCrimP 20, order a presentence report and schedule a date for arraignment, plea and sentencing consistent with the time necessary to effect the transfer;

(9) Order a presentence report where a defendant who is represented by counsel has agreed to plead guilty;

(10) In cases pending before the magistrate judge, declare forfeiture of bail and conduct proceedings pursuant to FRCrimP 46(e);

(11) After issuance of an order of forfeiture, enforcement, remission or exoneration by a district judge pursuant to FRCrimP 46(e), conduct further proceedings pertaining to the bond as may be referred by the district judge;

(12) Conduct proceedings under FRCrimP 40;

(13) Conduct proceedings for extradition;

(14) Conduct such other proceedings which may be performed by a magistrate judge as ordered by the assigned district judge.

8-1. Notice of Related Case in a Criminal Action.

(a) Notice Requirement. Whenever a party to a criminal action pending in this district knows or learns that the action is related to a civil or criminal action, which is or was pending in this district, that party shall promptly file a "Notice of Related Case in a Criminal Action" with the judge assigned to the earliest filed action and shall lodge a copy of the notice with the chambers of each judge assigned to each related case and shall serve all known parties with a copy of the notice.

Commentary

A judge's involvement in any pre-indictment miscellaneous proceeding (e.g., issuance of search warrant) is not a basis for assignment of any resulting criminal action to that judge as a related case.

(b) Definition of Related Case for Criminal Action. Any criminal action is related to another pending civil or criminal action when:

(1) Both actions concern one or more of the same defendants and the same alleged events, occurrences, transactions or property; or

(2) Both actions appear likely to entail substantial duplication of labor if heard by different judges or might create conflicts and unnecessary expenses if conducted before different judges.

(c) Content of Notice. A Notice of Related Case in a Criminal Action shall contain:

(1) The title and case number of each related case;

(2) A description of each related case;

(3) A brief statement of the relationship of each action according to the criteria set forth in Crim.. L.R. 8-1(b);

(4) A statement by the party with respect to whether assignment to a single judge is or is not likely to conserve judicial resources and promote an efficient determination of the action.

(d) Response to Notice. No later than 5 days after service of a Notice of Related Case in a Criminal Action, any party may serve and file a statement to support or oppose the notice. Such statement shall specifically address the issues in Crim.. L.R. 8-1(b) and (c).

(e) Related Case Order. After the time for filing support or opposition to the notice has passed, the judge assigned to the earliest-filed case shall issue an order that indicates whether the later-filed cases is related or not, and if the case is related, whether the later-filed case is to be reassigned to that judge. After the judge issues the related case order, the clerk shall reassign the case if ordered to do so and shall serve a copy of the order upon the parties and the assigned judge in the later-filed case.

IV. PREPARATION FOR DISPOSITION BY TRIAL OR SETTLEMENT

11-1. Voluntary Settlement Conference.

(a) Joint Request for Referral. At any time prior to the final pretrial conference, the attorney for the government and the attorney for a defendant, acting jointly, may file a stipulation requesting the assigned judge to refer the case to another judge or magistrate judge to conduct a settlement conference. The request must be in writing and it must be signed by the attorney for the government, the defense counsel and the defendant. In a multiple defendant case, all defendants need not join in the request in order for the assigned judge to refer the case pending against a stipulating defendant.

(b) Order of Referral. Upon a request made pursuant to Crim.. L.R. 11-1(a), the assigned judge may, in his or her discretion, refer the case to another judge or magistrate judge who has agreed to conduct settlement conferences in criminal cases. In conjunction with the referral, the assigned judge may order the pretrial services officer of the court to provide a report of any prior criminal proceedings involving the defendant to the parties and the settlement judge.

(c) Conduct of Settlement Conference. The role of the settlement judge is to facilitate a voluntary settlement between parties in a criminal case. The settlement judge shall schedule a conference taking into consideration the trial schedule in the case. The attorney for the government and the principal attorney for the defendant shall attend the conference. The defendant shall not be present at the conference, but shall be present at the courthouse for consultation with defense counsel. At least 5 days before the settlement conference, the deputy clerk for the settlement judge shall notify the marshal to bring a defendant who is in custody to the courthouse to be available for consultation with his or her defense counsel. The settlement conference shall not be reported. The settlement judge shall not communicate any of the substance of the settlement discussions to the assigned judge. No statement made by any participant in the settlement conference shall be admissible at the trial of any defendant in the case. If a resolution of the case is reached which involves a change in the plea, the settlement judge shall not take the plea.

(d) Withdrawal of Request for Referral. Participation in a settlement conference is voluntary. Any party may unilaterally file a notice of withdrawal of its request at any time.

12-1. Pretrial Motions.

Unless good cause is shown, all defenses, objections or requests pursuant to FRCrimP 12, which are capable of determination without the trial of the general issue, must be raised by pretrial motion and noticed for hearing on or before the deadline set by the assigned judge or magistrate judge for hearing all pretrial motions. Motions shall be noticed in accordance with Crim. L.R. 47-1.

16-1. Procedures for Disclosure and Discovery in Criminal Actions.

(a) Meeting of Counsel. Within 10 days after a defendant's plea of not guilty, the attorney for the government and the defendant's attorney shall confer with respect to a schedule for disclosure of the information as required by FRCrimP 16 or any other applicable rule, statute or case authority. The date for holding the conference can be extended to a day within 20 days after entry of plea upon stipulation of the parties. Any further stipulated delay requires the agreement of the assigned judge pursuant to Civil L.R. 7-12.

(b) Order Setting Date for Disclosure. In the absence of a stipulation by the parties, a schedule for disclosure of information as required by FRCrimP 16 or any other applicable rule, statute or case authority may be set *sua sponte* by the assigned judge or magistrate judge. If a party has conferred with opposing counsel as required by Crim. L.R. 16-1(a), the party may make an expedited motion pursuant to Crim. L.R. 47-3 to impose a schedule for such disclosure.

(c) Supplemental Disclosure. In addition to the information required by FRCrimP 16, in order to expedite the trial of the case, in accordance with a schedule established by the parties at the conference held pursuant to Crim. L.R. 16-1(a) or by the assigned judge pursuant to Crim L.R. 16-1(b), the government shall disclose the following:

> **(1) Electronic Surveillance.** A statement of the existence or non-existence of any evidence obtained as a result of electronic surveillance;
>
> **(2) Informers.** A statement of the government's intent to use as a witness an informant, i.e., a person who has or will receive some benefit from assisting the government;

(3) Evidence of Other Crimes, Wrongs or Acts. A summary of any evidence of other crimes, wrongs or acts which the government intends to offer under FREvid 404(b), and which is supported by documentary evidence or witness statements in sufficient detail that the court may rule on admissibility of the proffered evidence; and

(4) Co-conspirator's Statements. A summary of any statement the government intends to offer under FREvid 801(d)(2)(E) in sufficient detail that the court may rule on admissibility of the statement.

16-2. Motion to Compel Discovery.

(a) Filed as Expedited Motion. Unless the assigned judge or magistrate judge otherwise orders, a motion to compel disclosure or discovery shall be filed as an expedited motion pursuant to Crim. L.R. 47-3.

(b) Content of Motion. In addition to the matters set forth in Crim. L.R. 47-3, a motion to compel disclosure or discovery shall be accompanied by a declaration by counsel which shall set forth:

(1) The date of the conference held pursuant to Crim. L.R. 16-1(a);

(2) The name of the attorney for the government and defense counsel present at the conference;

(3) The matters which were agreed upon; and

(4) The matters which are in dispute and which require the determination of the court.

Cross Reference

See Crim. L.R. 47-32*"Expedited Motions in Criminal Cases."*

17.1-1. Pretrial Conference.

(a) Time for Pretrial Conference. On request of any party or on the judge's own motion, the assigned judge may hold one or more pretrial conferences in any criminal action or proceeding.

(b) Pretrial Conference Statement. Unless otherwise ordered, not less than 4 days prior to the pretrial conference, the parties shall file a pretrial conference statement addressing the matters set forth below, if pertinent to the case:

(1) Disclosure and contemplated use of statements or reports of witnesses under the Jencks Act, 18 U.S.C. § 3500, or FRCrimP 26.2;

(2) Disclosure and contemplated use of grand jury testimony of witnesses intended to be called at the trial;

(3) Disclosure of exculpatory or other evidence favorable to the defendant on the issue of guilt or punishment;

(4) Stipulation of facts which may be deemed proved at the trial without further proof by either party and limitation of witnesses;

(5) Appointment by the court of interpreters under FRCrimP 28;

(6) Dismissal of counts and elimination from the case of certain issues, e.g., insanity, alibi and statute of limitations;

(7) Joinder pursuant to FRCrimP 13 or the severance of trial as to any co-defendant;

(8) Identification of informers, use of lineup or other identification evidence and evidence of prior convictions of defendant or any witness, etc.;

(9) Pretrial exchange of lists of witnesses intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(10) Pretrial exchange of documents, exhibits, summaries, schedules, models or diagrams intended to be offered or used at trial, except materials that may be used only for impeachment or rebuttal;

(11) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(12) Preparation of trial briefs on controverted points of law likely to arise at trial;

(13) Scheduling of the trial and of witnesses;

(14) Request to submit questionnaire for prospective jurors pursuant to Crim.. L.R. 24-1(a), request for tax information pursuant to Crim.. L.R. 24-1(b), voir dire questions, exercise of peremptory and cause challenges and jury instructions;

(15) Any other matter which may tend to promote a fair and expeditious trial.

V. VENUE

18 -1. Intradistrict Assignment of Criminal Actions.

(a) Assignment to San Francisco. The clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma to the San Francisco Courthouse .

(b) Assignment to Oakland. The clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Alameda and Contra Costa to the Oakland Courthouse .

(c) Assignment to San Jose. The clerk shall assign all criminal actions and proceedings involving offenses allegedly committed in the counties of Santa Clara, Santa Cruz, San Benito or Monterey to the San Jose Courthouse.

(d) Extradition. The clerk shall assign any extradition proceeding to the courthouse which, pursuant to Crim.. L.R. 18-1, serves the county in which the defendant is a resident, or if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

18-2. Intradistrict Transfer.

Upon a judge's own motion or the motion of any party, unless the case was specially assigned pursuant to the Assignment Plan, a judge may order the clerk to transfer a criminal case to a different courthouse if it appears that the case was not properly assigned under Crim. L.R. 18-1(a), (b) (c) or (d) or that a transfer would be in the interest of justice based upon the convenience of the defendant and the witnesses and the prompt administration of justice.

Cross Reference

See 18 U.S.C. § 3236 (trial of homicide shall be in county in which the offense occurred).

20-1. Assignment, Plea or Sentencing under Rule 20.

Any criminal case transferred to this district pursuant to FRCrimP 20 shall be commenced in the courthouse which, pursuant to Crim. L.R. 18-1 (a), (b), or (c), serves the county in which the defendant is a resident, or if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

VI. TRIAL

24-1. Questionnaire for Prospective Jurors.

(a) Deadline for Submission of Approved Questionnaire for Prospective Jurors. Unless ordered otherwise by the assigned judge, a party who has obtained approval from the judge to submit a questionnaire to prospective jurors shall lodge a copy of the approved questionnaire with the clerk of the assigned judge at least 2 days before the date scheduled for jury selection.

(b) Request for List of Prospective Jurors in Tax Cases. In any judicial proceeding described in 26 U.S.C. § 6103(h)(4) in which a party desires the Internal Revenue Service to disclose whether the prospective jurors have or have not been the subject of any audit or other tax investigation, the following procedures shall be followed with respect to a motion for disclosure of the names of prospective jurors:

(1) On or before the deadline for filing dispositive motions, the party shall make an expedited motion for disclosure of the name and social security number of prospective jurors pursuant to Crim. L.R. 47-2. If no motions deadline is set, the motion must be made at least by the date pretrial conference statements are due. The motion for disclosure shall contain any request for change in the date for trial of the case which might be necessary to allow the Internal Revenue Service time to respond to the request.

Commentary

Ordinarily, at least 56 days should be allowed between the date of submission of the list of names of prospective jurors to the Internal Revenue Service Disclosure Office and the date for jury selection.

(2) Upon receipt of an order for disclosure, the courtroom deputy clerk for the trial judge shall submit to the Disclosure Office of the IRS the names, addresses and social security numbers of the prospective jurors, together with a copy of the disclosure order. The social security numbers and addresses of the prospective jurors shall not otherwise be disclosed to the parties.

(3) At the commencement of jury selection, the courtroom deputy clerk shall serve each party with a list of the names of prospective jurors annotated to reflect whether the IRS responded affirmatively or negatively to the inquiry with respect to each prospective juror.

24-2. Procedure for Exercise of Peremptory Challenges.

Peremptory challenges to which each party may be entitled under FRCrimP 24(b) shall be exercised in the manner directed by the assigned judge. Generally, the government may exercise the first challenge, the defense may exercise the second challenge, the next by the government, the next two by the defense, and alternating in this fashion until the government exercises its sixth challenge and the defense its tenth.

24-3. Passing a Peremptory Challenge.

If a party passes a peremptory challenge it shall be counted as if exercised. If the opposing party also passes, the jury shall be deemed selected. If the opposing party exercises a challenge, the party who previously passed, may exercise any unused challenge.

VII. JUDGMENT

32-1. Scheduling of the Sentencing Hearing.

(a) Setting the Date for Sentencing. Unless referral is waived or delayed pursuant to Crim. L.R. 32-1(b) or (c), at the time of a finding of guilt or entry of a plea of guilty, the defendant shall be referred to the probation officer for this court for investigation and preparation of a presentence report. Unless it determines otherwise, the court shall set the defendant's sentencing hearing:

(1) no earlier than 75 days after the referral date, for an in-custody defendant; or

(2) no earlier than 95 days after the referral date, for an out-of-custody defendant.

Commentary

This local rule is designed to allow sufficient time for investigation and preparation of a presentence report and the identification and narrowing of issues requiring judicial resolution before sentencing. Pursuant to FRCrimP 32(a), at the time of a finding of guilt or entry of a plea of guilty for good cause shown, counsel may request the court to adjust requirements set out by the various sections of Crim. L.R. 32 (e.g., shortening or lengthening the time between judgment and sentencing or modify the requirements regarding materials to be filed prior to sentencing.)

Offenses to which the sentencing guidelines are not applicable (offenses prior to November 1, 1987) shall also comply with the time limits established by this rule.

Cross Reference

See Crim.. L.R. 32-3 [Duty of defense counsel and defendant to report to probation office on the day of referral].

(b) Immediate or Expedited Sentencing. If the defendant waives his or her right to a presentence report and the court finds that it is able to exercise its sentencing authority meaningfully without a presentence report, the court may immediately sentence the defendant or set a sentencing hearing on an expedited schedule.

(c) Delayed Referral and Sentencing. For good cause shown, the court may delay referral of the case to the probation officer. Upon referral, unless otherwise ordered, the time periods set forth in Crim.. L.R. 32-1(a) shall apply.

(d) Notification to Probation Officer. On the day a defendant is referred to the probation officer, the clerk shall transmit to the probation officer written notice of referral and of the date set for sentencing of the defendant.

32-2. Rescheduling the Date for Sentencing.

(a) Stipulation or Expedited Motion. At any time prior to filing the final presentence report, the parties may file a stipulation or a party may make an expedited motion to change a date for the sentencing hearing in a case. The stipulation or motion shall be served upon the opposing party and the probation officer. In addition to complying with Crim. L.R. 47-3(b) or 47-5, the stipulation or motion shall contain:

(1) Good cause for the change;

(2) Certification that the moving party has conferred with opposing counsel and the probation officer and that those parties will be available on the changed date if the motion is granted;

(3) Certification that the moving party has conferred with the courtroom deputy clerk for the assigned judge and that the changed date is available on the calendar of the assigned judge; and

(4) A proposed order.

(b) Response or Opposition to Motion to Reschedule. Any response or opposition to a motion to reschedule the date for a sentencing hearing shall conform with the requirements of Crim. L.R. 47-3(c).

(c) Continuance by the Probation Officer. In the event there is a delay in obtaining information necessary for completing the presentence report, the probation officer may make a *ex parte* request pursuant to Civil L.R. 7-11(c) that the date for sentencing be changed. The request shall include:

(1) Certification that the probation officer has conferred with counsel for the parties and the courtroom deputy clerk with respect to the new date; that the date is available for the parties and the hearing calendar of the assigned judge or whether there is any objection to the change by a party; and

(2) A proposed order.

(d) Effect of Rescheduling of Sentencing on Deadlines. Unless otherwise stated, if the judge grants a motion to change the date for sentencing, unless otherwise ordered, the deadlines set in Crim L.R. 32-3, 32-4 and 32-5 shall automatically adjust and be calculated from the new sentencing date.

32-3. Initiation of the Presentence Investigation.

(a) Duty to Assist Probation Office Scheduling. On the day the defendant is referred to the probation officer, the defendant's counsel (and, if the defendant is out of custody, the defendant as well,) shall immediately report to the probation officer for the purpose of assisting in the presentence investigation.

Cross Reference

FRCrimP 32(b)(2) (Right of defense counsel to notice and opportunity to attend interview).

(b) Sentencing Information in Government's Possession. Within 7 days after receiving a written request from the probation officer for information (e.g., indictment, plea agreement, investigative report, etc.), the attorney for the government shall respond to the request and may supply other relevant information. The attorney for the government shall serve a copy of the material on defense counsel, except material already in the possession of defense counsel.

(c) Deadline for Submission of Material Regarding Sentence. Any material a party wishes the probation officer to consider for purposes of the proposed presentence report shall be submitted to the probation officer at least 45 days before the date set for sentencing. The party shall serve a copy of the material on opposing counsel, except for material already in the possession of opposing counsel.

32-4. Proposed Presentence Report.

(a) Distribution of Proposed Presentence Report. Pursuant to FRCrimP 32(b)(6) at least 35 days before the date set for sentencing, the probation officer shall furnish to defense counsel (or a *pro se* defendant) and to the attorney for the government, a proposed presentence report.

(b) Parties' Response to Proposed Presentence Report. Within 10 days after the proposed presentence report has been furnished pursuant to FRCrimP 32(b)(6), a party shall deliver to the probation officer and to opposing counsel a written response to the proposed presentence report which shall comply with Crim. L.R. 32-4(c).

(c) Content of Response to Proposed Presentence Report.

(1) Statement of No Opposition. If a party does not object to factual statements or computations of offense level under the guidelines of the United States Sentencing Commission, the party shall notify the probation officer in writing that the party has no objections under FRCrimP 32(b)(6).

(2) Statement of Opposition. If Crim. L.R. 32-4(c)(1) does not apply, the written response required by Crim. L.R. 32-4(b) shall identify and address any objections to factual statements or guideline computations in the proposed report. The response shall not be filed with the sentencing judge. Such objections must:

(A) Set out each objection to the proposed presentence report, including each material factual statement disputed and how that party's version of the facts differs from those stated in the proposed presentence report, as well as citation to material facts omitted from the proposed presentence report;

(B) Specifically cite the evidentiary support for that party's version of the material facts; and

(C) State any variation the party contends should be made from the guideline computation recommended in the proposed presentence report.

Commentary

This rule is intended to implement the informal process of identifying and narrowing issues that will ultimately require judicial resolution. Parties should be aware that the objections not raised to the probation officer may not be considered by the court absent a showing of good cause. See FRCrimP 32-5(b)(6)(D).

(d) Presentence Conference with Probation Officer. If the response of a party contains objections, the party shall attend any meeting called by the probation officer pursuant to FRCrimP 32((b)(6)(B). If the presence of a party or parties is not feasible, the probation officer may conduct the conference telephonically.

Commentary

This rule does not mandate that a presentence conference occur. If the probation officer feels that one is not needed, the probation officer need not call such a conference. However, if the probation officer does call such a conference, attorneys must attend and participate.

Participants in the presentence conference process should consider disseminating documents by electronic means (e.g., by fax transmission) in order to speed dissemination of the proposed presentence report. Crim. L.R. 32-3 presumes that the U.S. Probation Offices in the Northern District of California will establish regulations and procedures for the expeditious disclosure of the proposed presentence report to the defendant, defense counsel and the attorney for the government.

(e) Conference with In-Custody Defendant. If requested by the probation office and to the extent its available resources permit, the U.S. Marshal shall bring an in-custody defendant to a courthouse on a date scheduled for an initial or subsequent interview with the probation officer pursuant to FRCrimP 32 or for disclosure of the presentence report to the defendant pursuant to Crim. L.R. 32-4 and 32-5.

Commentary

This rule is designed to aid efforts by the probation officer to expedite meetings with defense counsel and the defendant and to reduce the cost of presentence interviews. It is contemplated that the Marshal would utilize any excess capacity to transport or hold a defendant in order to facilitate an interview.

32-5. Final Presentence Report.

(a) Final Presentence Report and Attachments. At least 14 days before the date set for sentencing, the probation officer shall disclose a copy of the final presentence report and recommendations to defense counsel (or a *pro se* defendant), attorney for the government and lodge a copy with the sentencing judge. The final presentence report shall be accompanied by a separate enclosure containing any of the following documents:

(1) Plea agreement;

(2) Character reference letters;

(3) Victim-witness letters;

(4) Certification by the probation officer that the proposed and final presentence reports were disclosed to defense counsel (or *pro se* defendant) and the dates of those disclosures; and

(5) Any other matter for consideration by the court which pertains to sentencing.

Commentary

The final presentence report shall include or contain an addendum setting forth objections that remain unresolved following the process set out in Crim. L.R. 32-4.

While this rule requires attachments to the final presentence report be in a separate enclosure, the probation officer may attach the materials to the copy of the final report which is furnished to the attorney for the government and attorney for the defendant, rather than in a separate enclosure. The probation officer does not need to supply a party with material which originated with that party.

(b) Sentencing Memorandum. The parties may submit a sentencing memorandum addressing sentencing issues as set forth below and must submit a sentencing memorandum if a departure or evidentiary hearing is requested. Any sentencing memorandum shall be filed at least 7 days prior to the date set for sentencing and served upon the opposing party and the probation officer in such a manner that it is received on the day it is filed. If the sentencing memorandum requests a departure, the title of the memorandum shall state "Motion for Departure;" and if the sentencing memorandum requests an evidentiary hearing, the title of the memorandum shall state "Request for Evidentiary Hearing." The sentencing memorandum shall contain the following:

(1) Unresolved Objections Identified in the Final Presentence Report. The sentencing memorandum need not reassert objections any party has made that are identified in the final presentence report as unresolved objections; however, a party's sentencing memorandum may elaborate on objections identified in the final presentence report and shall indicate whether or not the party requests an evidentiary hearing to resolve any objection.

(2) Departures. Any party requesting a departure that has not been identified in the final presentence report must file a sentencing memorandum that states the sentence requested, the grounds for the departure, and the legal authority for the departure.

(3) Other Matters. The sentencing memorandum may include any other matter that a party believes should be considered in connection with sentencing.

Commentary

With the prior approval of the court, the sentencing memorandum may be filed under seal.

(c) Reply to Sentencing Memorandum. A reply, if any, to the opposing party's memorandum may be filed no later than 3 days prior to the date set for sentencing and served upon the opposing party and the probation officer in such a manner that it is received on the day it is filed. If a party requests an evidentiary hearing to resolve any issue raised in the reply or the opposing party's sentencing memorandum, the title of the reply shall state "Request for Evidentiary Hearing."

Commentary

If the sentencing memorandum is filed under seal, the reply to the sentencing memorandum must be filed under seal.

(d) Evidentiary Hearing. If the sentencing memorandum or reply requests an evidentiary hearing, in addition to so stating in the title of the document, the pleading shall set forth:

(1) The factual issues to be resolved at the evidentiary hearing; and

(2) The names of the witnesses to be called and a description of their proposed testimony.

(e) Judicial Notice of Evidentiary Hearing or Unsolicited Departure. If the sentencing judge is considering departing for a reason not identified in the final presentence report or requested by a party or if the sentencing judge decides to conduct an evidentiary hearing, the judge shall notify the parties and the probation officer and may schedule a conference with the parties and the probation officer to decide any issues relating to the departure or evidentiary hearing. If the court issues no notice of an evidentiary hearing, no evidentiary hearing will be held on the date set for sentencing.

Commentary

This local rule outlines the procedure for formal litigation relating to sentencing that follows the informal proceedings set out in Crim. L.R. 32-1 through 32-4. This rule anticipates that litigants will have undertaken in good faith to resolve objections informally with opposing counsel and the probation officer and thereby identified and narrowed the issues requiring judicial resolution. It seeks to avoid duplication of efforts by relieving litigants from reasserting in memoranda those objections of which the court will be apprised by the final presentence report, but it requires objections to be raised in the informal process of Crim. L.R. 32-4 by imposing a requirement that good cause be shown before such an objection not previously made can be considered.

32-6. Sentencing Proceedings.

(a) Form of Judgment. After imposition of sentence, without unnecessary delay, the court shall enter judgment on the form entitled "Judgment in a Criminal Case" adopted by the Administrative Office of the United States Courts.

(b) Statement of Reasons. The court provides a statement of reasons pursuant to 18 U.S.C. § 3553(c)(1) when:

(1) The court completes and attaches the form entitled "Statement of Reasons" to the form of judgment entered pursuant to Crim. L.R. 32-6(a); or

(2) The sentencing judge states in open court the reason for imposing a sentence and orders the court reporter or recorder to prepare immediately a transcript of the proceedings, which the clerk shall attach to the judgment form required by Crim.. L.R. 32-6(a). The court reporter or recorder shall deliver a copy of the transcript to the probation officer.

(c) Record of Finding Regarding Accuracy of Presentence Report. When the sentencing judge makes a finding with respect to the accuracy of the presentence report pursuant to FRCrimP 32(c)(3)(D), the judge shall be deemed to have provided a record of the finding if he or she:

(1) Includes the finding in the statement of reasons pursuant to Crim.. L.R. 32-6(b)(1) or (2); or

(2) Orders the probation officer to incorporate the finding in an addendum to the final presentence report, a copy of which shall be provided to the court and the parties at least 3 days before the final presentence report is submitted to the Bureau of Prisons.

32-7. Confidential Character of Presentence Report.

(a) Disclosure of Presentence Reports and Related Records. A presentence report, probation, supervised release report, violation report and related documents to be offered in a sentencing or violation hearing are confidential records of the court. Except as otherwise required by FRCrimP 26.2, authorized by statute, federal rule or regulation or unless expressly authorized by order of the court, such records shall be disclosed only to the court, court personnel, the defendant, defense counsel and the attorney for the government in connection with sentencing, violation hearings, appeal or collateral review.

(b) Request for Disclosure Under Circumstances Not Covered by Statute. Anyone seeking an order authorizing disclosure of a presentence report which is not authorized by statute, federal rule or regulation shall file a motion pursuant to Crim. L.R. 47-1 with the sentencing judge or, if no longer sitting, with the General Duty Judge of the courthouse where the defendant was sentenced. Such motion shall state with particularity the reason disclosure is sought and to whom the report will be provided. No disclosure shall be made under this Crim. L.R. 32-7(b) except upon an order issued by this court. The motion shall be served upon the defendant, last defense counsel of record, the attorney for the government and the probation officer of record.

Commentary

Other than as allowed by any regulations of the Probation Office for disclosure (e.g., for disclosure to U.S. Marshal in the case of an absconding defendant or to other U.S. Probation Offices for purposes of supervision or other sentencings of the defendant; therapists with whom the defendant is engaged as a result of a court ordered study or condition of supervision; or U.S. Sentencing Commission pursuant to 28 U.S.C. § 994(w)), a presentence report should not be disclosed.

32.1-1. Revocation of Probation or Supervised Release.

(a) Petition for Revocation. The following procedures shall be followed with respect to any petition by a probation officer for revocation of probation or supervised release:

(1) The petition shall be filed and noticed for hearing before the sentencing judge or sentencing magistrate judge. If the sentencing judicial officer is unavailable, the petition shall be presented to the General Duty Judge or Criminal Calendar Magistrate Judge for the courthouse where the probationer or releasee was originally sentenced;

(2) The petition shall be accompanied by a summons and proposed order that the probationer or releasee appear and show cause why probation or supervised release should not be revoked. Alternatively, the petition may request that the court issue an arrest warrant. If a warrant is sought, the probation office shall recommend bail in a specified amount or that the probationer or releasee be held without release on bail; and

(3) Unless otherwise ordered, the probation officer shall serve a copy of the petition and order on the probationer or releasee, last known counsel of record and the attorney for the government.

(b) Preliminary Revocation Hearing. A preliminary hearing to determine whether or not there is probable cause to believe that a violation has occurred may be conducted by a criminal calendar magistrate judge. If the magistrate judge finds the existence of probable cause, the magistrate judge shall set the matter for a revocation hearing before the assigned judge or sentencing magistrate judge.

(c) Appearance by Attorney for the Government. An attorney for the government may appear on behalf of the government at any proceeding to revoke probation or supervised release.

(d) Order Regarding Disposition of Petition. The disposition of a petition for violation of probation or supervised release and the facts upon which it is based shall be set forth on the form adopted by the Administrative Office of the United States Courts for that purpose.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

40-1. Assignment of Rule 40 Cases.

For purposes of assignment of proceedings under FRCrimP 40, the "nearest available federal magistrate judge" shall be deemed to be a magistrate judge sitting at the courthouse which serves the county in which the defendant is a resident, or, if not a resident, the county in which the defendant is physically present at the time the defendant is apprehended.

41-1. Assignment of Rule 41 Motion or Proceedings.

When no criminal case has been filed, proceedings under FRCrimP 41 shall be assigned as a miscellaneous matter to the General Duty Judge at the courthouse which, under Crim. L.R. 18-1, serves the county from which the warrant was issued. When a criminal case is pending or has been completed, proceedings under FRCrimP 41 shall bear the original case number and shall be assigned to the district judge assigned to the pending or completed criminal case.

X. GENERAL PROVISIONS

44-1. Right to and Appointment of Counsel.

(a) Retained Counsel. If a defendant appears without counsel in a criminal proceeding, the court may grant a reasonable continuance if the defendant expresses a desire to retain counsel.

(b) Appointed Counsel. If a defendant requests appointment of counsel by the court, the court shall appoint counsel in accordance with the plan of the court adopted pursuant to the Criminal Justice Act of 1964.

(c) Proceeding *Pro Se*. A defendant may elect to proceed without counsel, provided the defendant waives the right to counsel in a manner approved by the judge or magistrate judge. However, if requested by the *pro se* defendant, the court may designate counsel to advise the *pro se* defendant.

44-2. Appearance and Withdrawal of Counsel.

(a) Appearance of Counsel. Whether retained or appointed, an attorney appearing for a defendant in a criminal case shall promptly inform the court by either a written or oral representation on the record that he or she is making a general appearance on behalf of the defendant.

(b) Withdrawal of Counsel. An attorney who wishes to withdraw must file an expedited motion to withdraw pursuant to Crim. L.R. 47-3, showing good cause for allowing the attorney to withdraw. Failure of the defendant to pay agreed compensation may not necessarily be deemed good cause. Notice of the motion shall be given to the defendant and all parties to the case. The attorney continues to represent the party until entry of a court order granting leave to withdraw.

(c) Duration of Representation.

(1) District Court Proceedings. Unless such leave is granted pursuant to Crim.. L.R. 44-2(b), the attorney shall continue to represent the defendant until the case is dismissed, or the defendant is acquitted or, if convicted, until the expiration of the time for making post-trial motions and for filing notice and appeal pursuant to FRAppP 4(b).

(2) On Appeal. If an appeal is filed, the attorney shall continue to serve until leave to withdraw is granted by the court having jurisdiction of the case or until other counsel has been appointed by that court as provided in 18 U.S.C. § 3006A and in

other applicable provisions of law.

44-3. *Pro Se* Defendant in Criminal Case.

(a) Manner of Giving Notice to *Pro Se* Defendant. If a defendant appears *pro se*, a party shall be deemed to comply with any requirement of these local rules for giving notice to defense counsel if such notice is personally served upon a defendant who is in custody or if such notice is mailed to the last known address of a defendant who is out of custody.

(b) Actions Required by *Pro Se* Defendant. Any act these local rules require to be done by defense counsel shall be performed by the defendant, if appearing *pro se*.

46-1. Motions to Release or Detain.

Subject to the provisions of 18 U.S.C. §§3141-3145, 3148-3149, magistrate judges shall hear and determine all motions to release or detain except as otherwise ordered by the court.

46-2. Posting Security.

When the release of a defendant is conditioned upon the deposit of cash (i.e., currency, check or money order) with the court, such deposit shall be made with the cashier of the office of the clerk of this court during the regular business hours set forth in Civil L.R. 77-1(b). When the release of a defendant is conditioned upon the deposit of other security (e.g., deed of trust) with the court, such deposit shall be made with the magistrate judge who set the bail or with a person designated by the magistrate judge in accordance with the "Guidelines in Posting Real Property as Bail in Lieu of Cash/Surety Bond; Surrendering Passports(s)," or as modified by the court. A copy of the guideline is available from the office of the clerk.

47-1. Motion in Criminal Case.

(a) Types of Motions. Any request to the court for an order in a criminal case must be presented by:

(2) Noticed motion pursuant to Crim.. L.R. 47-2;

(3) When authorized by these criminal local rules or permitted by the assigned judge, expedited motion pursuant to Crim. L.R. 47-3;

(4) For good cause shown, *ex parte* motion pursuant to Crim L.R. 47-4; or

(5) Stipulation of the affected parties pursuant to Crim. L.R. 47-5;

(b) To Whom Made. Unless otherwise ordered by the assigned judge, all motions in criminal cases shall be noticed in writing on the criminal motions calendar of the assigned judge.

47-2. Noticed Motion in a Criminal Case.

(a) Time. Except as the assigned judge directs or these criminal local rules require, all motions in criminal cases shall be filed, served and noticed in writing for hearing not less than 14 days after service of the motion or, if the judge specially sets a date for hearing, not less than 14 days before the date specially set. This rule does not apply to motions during the course of trial or hearing.

(b) Format. Except as otherwise specifically provided, the format of motions shall comply with the requirements of Civil L.R. 7-2(b) and (c). Motions presenting issues of fact shall be supported by affidavits or declarations which shall comply with the requirements of Civil L.R. 7-5.

(c) Time Under the Speedy Trial Act. When filing any motion or papers concerning any matter to which an exclusion under 18 U.S.C. § 3161 may apply, the government shall indicate in a concluding paragraph entitled "Speedy Trial Act Implications," the number of days remaining before trial must commence as of the date the motion or paper is filed. If the defendant has any objection to the government's calculation, the objection and the defendant's calculation shall be stated in any response to the motion or papers.

(d) Opposition or Reply. Any opposition to a noticed motion shall be served and filed not less than 7 days before the date set for the hearing. Any reply shall be served and filed not less than 4 days before the hearing. Any opposition or reply shall comply with Civil L.R. 7-3(b), (c), (d) and (e); 7-4 and 7-5, with respect to format and length unless otherwise ordered.

47-3. Expedited Motion in a Criminal Case.

(a) Applicability. Relief may be sought by expedited motion when authorized by these local rules or by the assigned judge. Unless otherwise ordered by the assigned judge, expedited motions will be determined without a hearing.

Cross Reference

See e.g., Crim.. L.R. 16-1(b) [expedited motion to impose a schedule for disclosure]; Crim.. L.R.16-4 [expedited motion to compel disclosure or discovery]; Crim.. L.R. 24-1(b) [expedited motion for audit information regarding prospective jurors]; Crim.. L.R. 32-2(a) and (c) [expedited motion to change date of sentencing].

(b) Form and Content of Expedited Motion. Expedited motions shall contain:

(1) In one filed document, entitled "Expedited Motion," not exceeding 5 pages in length: the motion and a memorandum of points and authorities, which shall contain a citation to the rule or order which permits use of an expedited motion to obtain the relief sought;

(2) Any supporting affidavit or declaration in compliance with Civil L.R. 7-5;

(3) A proposed order; and

(4) Unless excused, proof of service by delivery pursuant to FRCivP 5(b).

(c) Response or Opposition to Expedited Motion. Unless the assigned judge has ordered a different time, within 3 days after an expedited motion is served upon it, an opposing party may file an opposition which shall contain:

(1) A memorandum of points and authorities which shall not exceed 5 pages in length;

(2) Any supporting affidavits or declarations in compliance with Civil L.R. 7-5; and

(3) A proposed form of order.

(d) Order Regarding Expedited Motion. In the exercise of its discretion and for good cause, the judge may grant or deny an expedited motion, order further briefing or set the matter for hearing on the judge's criminal motion calendar.

47-4. *Ex parte* Motion in a Criminal Case.

(a) *Ex Parte* Motion. An *ex parte* motion is a motion filed and submitted for immediate determination by the assigned judge without giving an opposing party the amount of advance notice which is otherwise required by statute, federal rule or local rule. Unless relieved by these local rules or by order of a judge for good cause shown or unless being filed under seal pursuant to a statute or federal or local rules, a party making an *ex parte* motion shall nevertheless give reasonable advance notice of the motion to an opposing party.

Cross Reference

See e.g., Crim.. L.R. 6-2 [ex parte motion re grand jury].

(b) Form and Content of *Ex Parte* Motion. An *ex parte* motion shall contain:

(1) In one filed document not exceeding 5 pages in length, the motion, a memorandum of points and authorities which shall contain a citation to the rule or order which permits use of an *ex parte* motion to obtain the relief sought;

(2) Affidavits or declarations setting forth specific facts which support granting the requested relief without notice or with limited notice to the opposing party;

(3) A proposed form of order.

(c) Order Regarding *Ex Parte* Motion. In the exercise of his or her discretion and for good cause, the judge may grant or deny an *ex parte* motion or request, order further notice, briefing or set the matter for hearing on the judge's criminal motion calendar.

47-5. Stipulation.

A stipulation requesting judicial action shall be in writing signed by all affected parties or their counsel. A proposed form of order may be submitted with the stipulation and may consist of an endorsement on the stipulation of the words, "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces designated for the date and signature of the judge.

Cross Reference

See e.g., Crim.. L.R. 11-1(a) [stipulation to voluntary settlement conference];Crim.. L.R. 32-2(a) and (c) [stipulation to change date of sentencing].

55-1. Custody and Disposition of Exhibits.

(a) Applicability of Civil Local Rules Regarding Exhibits. Excepting contraband, firearms and other sensitive items, or unless the judge hearing the matter otherwise orders, the procedures set forth in Civil L.R. 79-4(a) and (b) shall govern the custody and disposition of exhibits in criminal proceedings before the court.

(b) Applicability of Civil Local Rules Regarding Sealed Documents. Except for Civil L.R. 79-5(e), all other provisions of Civil L.R. 79-5 apply to the filing of documents under seal in criminal cases.

58-1. Designation of Magistrate Judges to Try Misdemeanors and Other Petty Offenses.

Subject to the limitation of 18 U.S.C. § 3401, magistrate judges are specially designated to try persons accused of and sentence persons convicted of misdemeanors committed within this district. In addition, magistrate judges may dispose of misdemeanors which are transferred to this district under FRCrimP 20. A magistrate judge may direct the probation officer to conduct a presentence investigation of any person convicted of a misdemeanor and to render a report to the magistrate judge prior to the imposition of sentence.

58-2. Appeal from Conviction by Magistrate Judge.

(a) Assignment to District Judge. When an appeal from a judgment of conviction or sentence by a magistrate judge to a district judge is made pursuant to FRCrimP 58(g)(2), the clerk shall assign the appeal to a district judge in the same manner as an indictment or felony information would be assigned.

(b) Record. If a transcript is desired by a party, the party shall order the transcript from the court reporter in accordance with the procedure prescribed by FRAppP 10(b). If the proceedings were recorded by audio tape, the audio tape shall constitute the record of the proceedings. Upon request, the clerk shall duplicate and provide a copy of the audio tape to the requesting party at the rate provided for in 28 U.S.C. § 1914. No transcript shall be made of an audio tape unless ordered by the assigned district judge pursuant to expedited motion by the requesting party. The record shall be deemed complete 10 days after the notice of appeal is filed if no transcript is ordered or upon filing of the transcript or upon lodging the audio tape with the assigned district judge.

(c) Hearing. After the record is complete, the clerk for the assigned district judge shall notify the parties of the time set for hearing the appeal. The hearing shall be not more than 90 days after the date of the notice.

(d) Time for Filing and Serving Briefs. The appellant shall serve and file an opening brief not later than 60 days before the date set for the hearing pursuant to Crim.. L.R. 58-2(c). The appellee shall serve and file a responsive brief not later than 30 days before the hearing date. The appellant may serve and file a reply not later than 15 days before the hearing date.

(e) Length. Unless the court expressly orders otherwise pursuant to *ex parte* request made prior to the due date, the opening and responsive briefs shall not exceed 25 pages and the reply shall not exceed 10 pages.

58-3. Violation Notices.

Pursuant to Rule 58(d)(1), Federal Rules of Criminal Procedure, the prosecution of petty offenses initiated by citation or violation notice shall be terminated upon receipt by the clerk of the district court of the amount, if any, of the fixed sum indicated as a fine on the face of the citation or violation notice. Such sums may be revised from time to time by General Order of the court.

59-1. Effective Date.

These rules shall take effect on September 1, 1996 and shall govern all criminal proceedings commenced after that date and upon order by the assigned judge to all criminal proceedings then pending.

APPENDIX
SAMPLE FORMS

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),	**CASE NO.**
v.	**JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER**
Defendant(s).	

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

2. The principal factual issues which the parties dispute:

3. The principal legal issues which the parties dispute:

4. The other factual issues *[e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue]* **which remain unresolved for the reason stated below and how the parties propose to resolve those issues:**

5. The parties which have not been served and the reasons:

6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:

ALTERNATIVE DISPUTE RESOLUTION

7. The following parties consent to assignment of this case to a United States Magistrate Judge for *[court or jury]* **trial:**

8. The parties have already been assigned *[or the parties have agreed]* **to the following court ADR process** *[e.g. Nonbinding Arbitration, Early Neutral Evaluation, Mediation, Early Settlement with a Magistrate Judge] [State the expected or scheduled date for the ADR session]***:**

9. The ADR process to which the parties jointly request *[or a party separately requests]* **referral:**

DISCLOSURES

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computations and insurance agreements]***:**

DISCOVERY

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]*:

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-6, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolution options.

Dated: _____ **_____**
[Typed name and signature of each party and lead trial counsel]

Dated: _____ **_____**
[Typed name and signature of each party and lead trial counsel]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders: *[The Court may wish to make additional orders, such as:*

a. Referral of the parties to court or private ADR process;
b. Schedule a further Case Management Conference;
c. Schedule the time and content of supplemental disclosures;
d. Specially set motions;
e. Impose limitations on disclosure or discovery;
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions;
I. Set deadline for hearing motions directed to the merits of the case;
j. Set deadline for submission of pretrial material;
k. Set date and time for pretrial conference;
l. Set a date and time for trial.]

Dated: _____ **_____**
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),	**CASE NO.**
v.	**SUPPLEMENTAL CASE MANAGEMENT STATEMENT AND PROPOSED ORDER**
Defendant(s).	

Pursuant to Civil L.R. 16-8(d), the parties to the above-entitled action certify that they met and conferred at least 10 days prior to the subsequent case management conference scheduled in this case and jointly submit this Supplemental Case Management Statement and Proposed Order and request the Court to adopt it as a Supplemental Case Management Order in this case.

DESCRIPTION OF SUBSEQUENT CASE DEVELOPMENTS

1. The following progress or changes have occurred since the last case management statement filed by the parties:

2. The parties jointly request [or a party separately requests] the Court to make the following Supplemental Case Management Order:

Dated: _____ **_____**
[Typed name and signature of counsel]

Dated: _____ **_____**
[Typed name and signature of counsel]

SUPPLEMENTAL CASE MANAGEMENT ORDER

The Supplemental Case Management Statement and Proposed Order is hereby adopted by the Court as a Supplemental Case Management Order for the case and the parties are ordered to comply with this Order. *[In addition, the Court orders as follows:]*

Dated: _____ **_____**
UNITED STATES DISTRICT JUDGE